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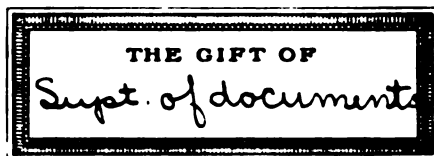
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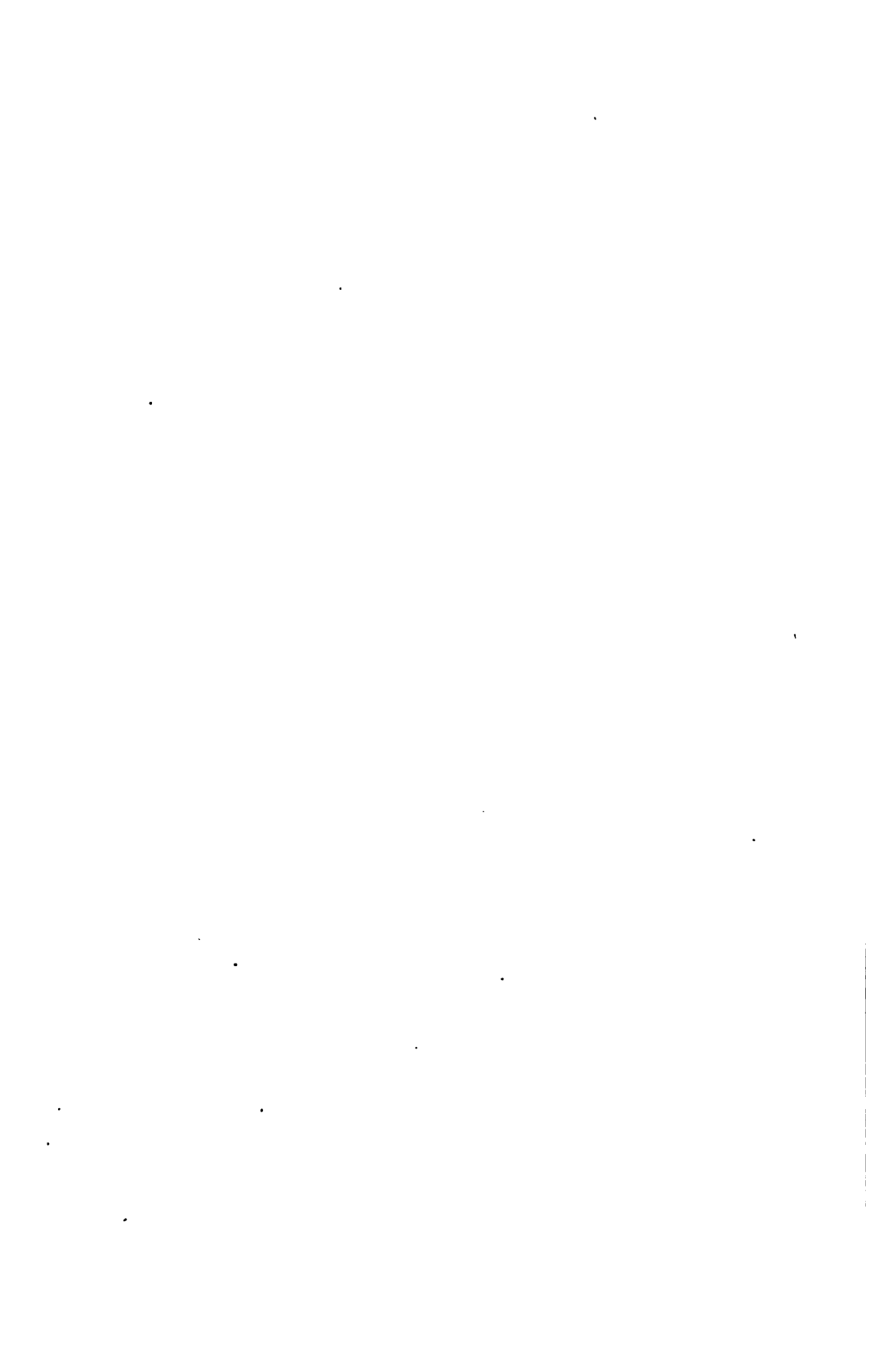
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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XVII

DECISIONS OF THE
48 INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

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INTERSTATE COMMERCE COMMISSION.

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CHARLES A. PROUTY, OF VERMONT.

FRANCIS M. COCKRELL, OF MISSOURI.

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JAMES S. HARLAN, OF ILLINOIS.

EDWARD A. MOSELEY, Secretary.

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 2061.

MONARCH MILLING COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-
PANY ET AL.

Submitted March 17, 1909. Decided June 28, 1909.

Class rate found to be unreasonable. Reasonable commodity rate voluntarily established by the carriers. Reparation awarded.

W. E. Carr for complainant.

E. B. Peirce and *S. H. Johnson* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant is a corporation engaged in the milling of grain at Hutchinson, Kans. Early in November, 1907, it shipped two carloads of flour, total weight 70,520 pounds, ground from grain which originated at Turon, Kans., to Lake Charles, La., routing the same over the lines of the defendants and via Fort Worth, Tex. At that time the only rate on flour from Turon to Lake Charles in effect via this route was the fifth class rate of 70 cents per 100 pounds, and the through rate on the finished product was applicable, under the milling-in-transit rates, all the way from Turon to Hutchinson. The total charges collected were \$493.64.

The routing was specified in order to secure Louisiana Western delivery at destination, although via other routes much lower rates were available. The defendants, the Louisiana Western Railroad Company, the Texas & New Orleans Railroad Company, and the Houston & Texas Central Railroad Company, answering, admitted that the present rate is 43 cents, and that that would have been a reasonable rate for these shipments.

At the time these shipments moved there was a rate of 42½ cents per 100 pounds on flour from Turon to Lake Charles via the Rock Island and Iron Mountain routes, and approximately the same rate via other routes. Since September 15, 1908, a rate of 43 cents has been in effect via all routes between these points, and nothing in the record indicates that at the time these shipments moved and via the route which they traversed a rate of 43 cents was not fully compensatory to the carriers and reasonable and fair to the shipper.

Our conclusion is that the rate of 70 cents charged upon these shipments was unreasonable and excessive to the extent that it exceeded a rate of 43 cents per 100 pounds and that complainant should recover from the defendants the sum of \$190.40, with interest.

Such an order will be entered.

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No. 1900.
OTIS ELEVATOR COMPANY
v.
NEW YORK CENTRAL & HUDSON RIVER RAILROAD COM-
PANY ET AL.

No. 1906.
SAME
v.
SAME.

Submitted March 30, 1909. Decided June 28, 1909.

The elevator controllers involved in these cases were parts of the hoisting machines with which they were shipped and under the classification could have been shipped in mixed carloads at the rate applicable to hoisting machines. Reparation awarded.

W. H. Brady for complainant.

Edgar H. Boles for New York Central & Hudson River Railroad Company.

Gordon M. Buck for Southern Pacific Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

Robert Dunlap and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The complaint in each of these cases was filed December 1, 1908, but the claim involved in case No. 1900 was presented to the Commission informally on November 8, 1907. These cases were consolidated and heard at the same time. In case No. 1900 complainant corporation on or about November 9, 1906, shipped from Yonkers, N. Y., to San Francisco, Cal., a carload of electrical hoisting machinery and elevator controllers, which were parts of said hoisting machinery, weighing in the aggregate 35,500 pounds, the originating carrier
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being the New York Central & Hudson River Railroad Company and the delivering line the Atchison, Topeka & Santa Fe Railway Company. The initial carrier billed the entire shipment under the Class A rate of \$1.40 per 100 pounds, but at destination the delivering carrier separated the shipments and compelled complainant to pay the Class A rate of \$1.40 per 100 pounds on the hoisting machinery, weighing 33,520 pounds, and \$3 per 100 pounds on the elevator controllers, weighing 1,980 pounds, the latter being the first class rate on less than carload shipments of electrical appliances and supplies, n. o. s., in boxes or barrels. The complainant alleges that the Class A rate of \$1.40 per 100 pounds should have been applied to the elevator controllers, as they were parts of the hoisting machinery and were shipped therewith, and it asks reparation in the sum of \$31.68.

Case No. 1906, involves the same facts and the same issue as case No. 1900, except that the hoisting machinery weighed 43,200 pounds and the elevator controllers 2,685 pounds. This shipment was made on August 15, 1907, and the delivering carrier was the Southern Pacific Company. Reparation is asked in this case in the sum of \$42.96.

The Atchison, Topeka & Santa Fe Railway Company asserts that the lawful tariff rate was applied to the shipment, while the New York Central & Hudson River Railroad Company and the Southern Pacific Company concede that the elevator controllers were parts of the hoisting machinery and were entitled to the same rate.

Western Classification No. 41, effective October 1, 1906, and in force on the date of shipment involved in case No. 1900 names Class A rate on hoisting machines, freight and passenger, s. u. or k. d., also parts thereof as named and parts, n. o. s., straight or mixed carloads, minimum weight 24,000 pounds. Western Classification No. 42, effective April 1, 1907, and in force on date of shipment involved in case No. 1906, carried the same provision. The classifications referred to on the dates of the respective shipments involved rated electrical controllers and parts thereof in carloads (subject to Rule 21-B), as Class A. Rule 21-B of the classification is as follows:

The carload ratings shown in the classification for articles subject to Rule 21-B will not apply on straight carloads of the articles named. In such case the amounts of the articles so designated which may be included shall not exceed 33½ per cent of the minimum weight provided for the mixed carload.

These classifications at the time of said shipments rated electrical appliances and supplies in less than carloads, n. o. s., in boxes or barrels, as first class.

Rule 21-B applies to this case as far as the weight of the shipments is concerned if there is any provision for the mixing of hoisting machines with elevator controllers. We think the mixture was

provided for in the provisions of Classifications 41 and 42, relating to the rating of hoisting machines and parts thereof. The following provision is also found therein:

Dynamos and motors forming an integral part of machinery may take same rating as the machines of which they form a part.

The hoisting machinery comes under the general heading of machinery, and if dynamos and motors form an integral part of any kind of machinery, they certainly would form a part of electrical hoisting machinery. And if dynamos and motors form an integral part of electrical hoisting machinery it necessarily follows that electrical controllers are an integral part of hoisting machinery because they all have to do with generating, applying, and controlling the electrical current.

Therefore the elevator controllers involved in these cases were parts of the hoisting machines with which they were shipped, and under the classification could have been shipped in mixed carloads at the rate applicable to hoisting machines.

It may be stated that after these shipments moved the carriers by an amendment to their tariff effective October 1, 1907, provided that controllers for electrical elevators could be included in mixed carloads with electrical elevators or hoisting machinery.

From the record we find that the rate which should have been applied to the total weight of each shipment was \$1.40 per 100 pounds and that therefore complainant is entitled to reparation in the sum of \$74.64 with interest.

An order will be entered in accordance with these findings.

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No. 1818.

CARSTENS PACKING COMPANY

v.

SOUTHERN PACIFIC COMPANY.

Submitted June 1, 1909. Decided June 28, 1909.

Complainant asks reparation on shipments of sheep from points in California to Tacoma, Wash., because single-deck cars were furnished instead of double-deck cars ordered; but upon all of the facts in the record it appears that the complainant is not entitled to reparation and that the complaint should be dismissed.

J. E. Belcher for complainant.

W. A. Robbins, P. F. Dunne, W. W. Cotton, and F. C. Dillard for defendant.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

Complainant alleges that from February 2. to April 27, 1905, it shipped 18 carloads of sheep from points in California to its plant in Tacoma, Wash.; that prior to such shipment it ordered of the defendant double-deck cars and was furnished single-deck cars, and charged per car the single-deck rate; that its agent who ordered the cars and had charge of the shipments understood that when single-deck cars were placed for loading that two single decks would be furnished in lieu of each double-deck ordered; that the defendant carries in its tariff a rule applicable from California points to points in Oregon to the effect that where double-deck cars are ordered for transporting sheep and two single-deck cars are furnished in lieu of each double-deck ordered, charges would be assessed on basis of cars furnished; and that this rule is unjust and unreasonable, and charges assessed on said 18 carload shipments are unjust and unreasonable; and prays reparation in the sum of \$520.92.

The defendant denies that complainant or its agent ordered any double-deck cars, or that any such orders were accepted by it, but admits that it furnished single-deck cars and charged its regularly

published tariff rate for single-deck cars, of which complainant had full knowledge, and that its tariff provided that if it could not furnish double-deck equipment and shipment moved in single-deck cars, rates provided for the latter would be charged.

Defendant denies that such tariff rule is unjust or unreasonable or that the charges assessed on the shipments are unjust or unreasonable. Defendant alleges that it has no double-deck cars and that the provision in regard to same is made to provide a charge for double-deck cars of other roads which may happen to be on its line and may be available to shippers, and in cases where shippers may desire at their expense to construct upper decks in defendants' single-deck cars.

The hearing was had in Tacoma, Wash., when the attorney for complainant, in response to this inquiry by the examiner—"Then the ground of your complaint in this case is that the rates charged for shipments of sheep between points named in your complaint are unreasonable and unjust"—replied, "Yes, sir."

To establish that the rates charged were unjust and unreasonable the complainant presented comparative tables showing rates on sheep in double-deck cars, Southern Pacific Company northbound to Portland, Oreg., and Northern Pacific Railway westbound to Tacoma, and over the Great Northern Railway westbound to Tacoma; also showing difference between rates on cattle on Southern Pacific Company northbound, and sheep in double-deck cars on same railroad northbound.

Mr. Carstens, for complainant, stated that he was not shipping extensively from California, the rates prohibit shipping, and that he had recently bought sheep in Suisun, Cal., and was charged single-deck car rates, and that he had probably made shipments the year before the shipments in controversy, and knew of the rates and the shipments in controversy were made on account of the scarcity of sheep at Tacoma.

Officials of the defendant testified that the defendant did not have any double-deck equipment of its own, and did not desire to ship sheep in double-deck cars over its line to Portland, Oreg., on account of the curves, tunnels, and grades on the line, and that the Oregon Short Line and the Union Pacific Railway sought business on defendant's lines in California and furnished double-deck cars for the transportation of sheep, and that the tariffs on defendant's lines in California made rates for standard single-deck cars and then provided a rate for double-deck cars; that is, they fixed the rate on a one-deck car for sheep and then if a double-deck car was used they added for the second deck 70 per cent of the single-deck rate, making the rate on the double-deck cars 170 per cent, and that for the last

fifteen years such shipments going eastward have been taken care of by double-deck equipment furnished by the Oregon Short Line and the Union Pacific, and that the tariff rates specified in their tariffs and still in force have been in operation for many years. The exact provision in the defendant's tariff is as follows:

Double-deck cars.—Shipments of sheep, hogs, goats, and calves when loaded in double-deck cars will be charged for at 170 per cent of the rate provided for single-deck cars of the same length. If the company can not furnish double-deck equipment and shipments move in single-deck cars, rates provided for the latter will be charged.

There was no claim in this case that the defendant at the time named had double-deck cars at the point of shipment which could have been used in these shipments. The mere fact that rates on shipments of sheep over the Northern Pacific Railway and the Great Northern Railway westbound to Tacoma may have been less than from California points, and that there may have been a difference between the rates on cattle on the Southern Pacific northbound and the rates on sheep in double-deck cars, is not deemed sufficient to establish that the rates charged on these shipments were unjust or unreasonable.

Upon all the facts in the case the conclusions of the Commission are that the complainant is not entitled to reparation and the complaint must be dismissed. It will be so ordered.

17 I. C. C. Rep.

No. 1726.
WOODWARD & DICKERSON
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Decided June 28, 1909.

Petition for rehearing of the prior decision of the Commission in this case relative to limitation upon actions for recovery of money damages denied.

William A. Northcutt for petitioner, Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION UPON PETITION FOR REHEARING.

KNAPP, Chairman:

The defendant, Louisville & Nashville Railroad Company, has filed a petition, and submitted argument in support thereof, asking for rehearing and modification of the Commission's order in the above-entitled proceeding, 15 I. C. C. Rep., 170, upon the ground that the Commission erred in its construction of that portion of the amendment to the act approved June 29, 1906, placing a limitation upon actions before the Commission for the recovery of money damages, which reads as follows:

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order and not after: *Provided*, That claims accrued prior to the passage of this act may be presented within one year.

The shipments involved in this case were made in November and December, 1905, and the payment of freight charges was made to the delivering carrier on December 26, 1905. Complaint was filed with the Commission September 5, 1907, less than two years after the cause of action accrued, but more than one year after the passage of the amendment referred to. The defendant contends that the claim is barred because not presented to the Commission within one year after the passage of the law, and bases its argument upon the proviso in the clause establishing the limitation.

17 I. C. C. Rep.

U. S. N.

The question raised has already been decided by the Commission in several cases bearing upon the application of the limitation (*Nicola Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C. Rep. 206; *Kile & Morgan Co. v. Deepwater Ry. Co.*, 15 I. C. C. Rep. 235), and it is unnecessary at this time to repeat the reasoning which leads the Commission to the conclusion therein announced. It is sufficient to say that, after careful consideration of the argument presented by defendant, the Commission adheres to the construction of the statute announced in the cases above cited and in the present proceeding. Prior to the enactment of the amendment of 1906, apparently the limit upon actions for money damages before the Commission depended upon the statute of the state in which the cause of action arose. But having established a new limitation of two years, it is apparent that many claims not barred at that time would have been barred before they could be filed, had not the Congress inserted the proviso in question. It has therefore seemed to us more reasonable to assume that the Congress intended to give one year within which there might be presented to the Commission claims valid prior to the approval of the law, but which would thereupon have been barred without notice, than to assume that the Congress, in respect of claims not barred by the new limitation, should create two classes, and say that those which accrued subsequent to August 26, 1906, might be presented at any time prior to the expiration of two years from that date, while claims which accrued perhaps immediately prior to the date mentioned could be presented only within one year thereafter. The petition for rehearing is therefore denied, and it will be so ordered.

17 I. C. C. Rep.



No. 2414.

AMERICAN TRUST & SAVINGS BANK, TRUSTEE IN BANKRUPTCY FOR THE METALS EXTRACTION & REFINING COMPANY,

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted April 27, 1909. Decided June 29, 1909.

Complainant shipped 16 carloads of mill cinders from Chicago to Omaha, charges being assessed at the rate of \$2 per net ton. The tariff was subsequently amended so as to provide for the assessment of charges per gross ton. Reparation awarded.

Frank H. Jones for complainant.

William Ellis for defendant.

REPORT OF THE COMMISSION.

LANE, Commissioner:

In August, 1908, the Metals Extraction & Refining Company shipped 16 carloads of mill cinders from Chicago, Ill., to Omaha, Nebr., via defendant's line, charges being assessed at the published rate of \$2 per net ton, or in the total amount of \$1,499.50. It appears that the provision in the tariff that the rate should be assessed per "net ton" was in error, and that soon after the shipment in question amendment was made so as to provide for the assessment of charges at the rate of \$2 per "gross ton of 2,240 pounds." We find that the rate of \$2 per net ton charged on the shipments in question was unreasonable, and that a reasonable rate therefor would have been \$2 per gross ton. Reparation will be awarded in the amount of \$160.66, with interest from the date of payment of the freight charges.

17 I. C. C. Rep.

No. 2224.

ANDERSON, CLAYTON & COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL

Submitted May 20, 1909. Decided June 29, 1909.

Complainant shipped 125 bales of cotton from Lawton, Okla., to Chickasha, Okla., for concentration and subsequent reshipment. Defendants' tariffs provided that on reshipment from the concentration point the through rate from point of origin to final destination would be protected. Consignment was destroyed by fire while standing upon the platform of the compress at Chickasha. Complaint seeking refund of the local charges collected for the movement from Lawton to Chickasha dismissed.

Benjamin Clayton for complainant.

E. B. Peirce for defendants.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant shipped 125 bales of cotton via line of defendant, St. Louis & San Francisco Railroad Company, from Lawton, Okla., to Chickasha, Okla., in February and March, 1907, for concentration. Charges were collected at the local rate of \$1.50 per bale, or in the total amount of \$187.50. At the time of movement defendants' tariffs provided that on reshipment to final destination the through rate from the point of origin would be protected. On April 11, 1907, consignment was destroyed by fire while standing on the platform of the compress at Chickasha, damages being recovered by the complainant for the value of 100 bales computed at the concentration point. Reshipment to final destination thus being prevented, the complainant seeks in this proceeding to recover the amount of the charges collected for the movement from Lawton to Chickasha.

It is apparent that this complaint is altogether without merit. Transit privileges are allowed upon the theory that the inbound shipment may be stopped and the identical freight, or its product, or its exact equivalent of the same commodity moving into the transit point under the same privilege, may be shipped to ultimate destination under the through rate from point of origin. If for any reason reshipment becomes impossible, the carrier is under no obligation to refund the charges collected for the movement to the transit point. An order will be issued dismissing the complaint.

17 I. C. C. Rep.



No. 2336.

HERBERT E. HAVEMEYER AND NORRIS H. MUNDY, CO-
PARTNERS TRADING UNDER THE FIRM NAME OF
W. A. HAVEMEYER & COMPANY,

v.

UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted April 12, 1909. Decided June 21, 1909.

Defendants' through class rate of 74½ cents per 100 pounds exacted for the transportation of three carloads of sugar from Eaton, Colo., to Decatur, Ill., found excessive to the extent that it exceeded a subsequently established joint through rate of 32½ cents per 100 pounds. Reparation awarded.

McKenney & Flannery for complainants.

J. A. Munroe for Union Pacific Railroad Company.

F. B. Bowes for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainants, who are copartners doing business as brokers and agents for dealers in sugar and other commodities, with their principal office at Chicago, have entered into a stipulation with the defendants herein in which the facts of this case are set forth substantially as follows:

The shipments in question were three carloads of sugar, weighing 202,000 pounds, and moved on August 30 and September 7 and 11, 1907, from Eaton, in the state of Colorado, destined originally to Chicago, but reconsigned by the shipper while the cars were in transit to Decatur, in the state of Illinois. The defendants' tariffs contained a rule permitting such reconsignment. There was in effect at the time a joint through rate of 32½ cents per 100 pounds on sugar in carloads from Eaton to Decatur, but the rate was not applicable over the line of the defendant, the Illinois Central Railroad Company. The freight charges which the defendants demanded and the complainant paid under protest were assessed, therefore, at a through

class rate of $74\frac{1}{2}$ cents per 100 pounds published in another tariff to which all the defendants were parties. Subsequently, on July 7, 1908, the rate of $32\frac{1}{2}$ cents was made to apply by the Illinois Central to Decatur, and that rate is now the lawful rate on such shipments over the route by which these carloads moved.

On the facts appearing of record, which have been fully verified, we find that the through rate of $74\frac{1}{2}$ cents was excessive to the extent that it exceeded $32\frac{1}{2}$ cents per 100 pounds, and that $32\frac{1}{2}$ cents will be a reasonable rate for the future. We further find that the complainant is entitled to reparation in the sum of \$848.40, with interest, being the difference between \$1,504.90, the total charges actually collected, and the aggregate amount that would have been collected on the basis of a rate of $32\frac{1}{2}$ cents.

An order will be entered accordingly.

17 I. C. C. Rep.

No. 1053.
H. P. HOOD & SONS
v.
DELAWARE & HUDSON COMPANY.

Submitted March 10, 1909. Decided June 23, 1909.

1. Complaint alleged unjust discrimination, unreasonable rates, and inadequate service in transportation of milk from Poultney, Vt., and intermediate stations to Eagle Bridge, N. Y., destined to Boston, Mass. After partial hearing an agreement covering all points in controversy was filed, and a tariff was issued based thereon. Upon disagreement of parties as to the interpretation of the tariff it was *Held*:
2. The Commission has no authority to approve or enforce an agreement between carrier and shipper, nor will it undertake to construe such an agreement nor to say that a tariff shall be issued in compliance therewith.
3. Such an agreement may be regarded, and used as evidence of an admission as between the parties executing it, of strong evidentiary value, that the rate agreed upon is reasonable.
4. It is the duty of the Commission to establish just and reasonable rates available for all shippers alike without discrimination in favor of any shipper by reason of an agreement with the carrier.
5. The rates charged and collected must be in accordance with the tariff legally effective whether the same was issued in compliance with any private agreement with the shipper or not.
6. When the language of a tariff is ambiguous the agreement may be examined as a medium of explanation of the tariff to remove the ambiguity.
7. When a commodity is purchased in and shipped from one state to a point in another state the transaction is indelibly impressed with the character of interstate commerce, and the various mutations through which the article passes and the handlings which it undergoes while in transit are merely incidental to the movement.
8. Every carrier by railroad that participates in the carriage of any such commodity or that performs any part of the transportation in a continuous passage from a point of origin in one state to a destination in another state is engaged in interstate commerce and subject to the jurisdiction of the act.
9. Reparation will be awarded in accordance with findings upon proper proof of shipments.

Whipple, Sears & Ogden for complainant.

Lewis E. Carr for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainant, a corporation, is engaged in the business of purchasing milk from the farmers at various points in the New England States and New York, and shipping it by railroad from the stations where it is assembled to the markets, mainly in the large cities.

This case involves shipments of milk over that branch of defendant's railroad constituting a part of the Rutland and Washington division, extending southward from Castleton, Vt., via Poultney and West Pawlett, Vt., Salem, N. Y., and other stations, to Eagle Bridge, N. Y.

On August 1, 1904, complainant began the business of purchasing milk in the country contiguous to this branch of defendant's road, and shipping it from stations in Vermont and New York to Boston, Mass., by said route, under an arrangement with defendant to transport the milk to Eagle Bridge, N. Y., from West Pawlett, Vt., a distance of 33 miles, at a minimum charge per car per annum of \$4,000, and from Poultney, Vt., to the same place, a distance of 45 miles, at a minimum charge per car per annum of \$4,500, the maximum load for each car not to exceed 250 cans of 40 quarts each. No reference whatever was made in this arrangement to the charge for cans in excess of 250.

The shipments of milk were billed from said stations to Eagle Bridge, where complainant inspected it, pasteurized it if necessary for its preservation, provided refrigeration, and transferred it to another car to be transported to Boston. If upon inspection any of the milk was deemed unfit for the Boston market, it was unloaded and manufactured into cheese or other product at complainant's plant at Eagle Bridge. The milk was carried from Poultney to Eagle Bridge till May, 1905, on one car at the \$4,500 rate, when it became necessary to operate 2 cars, which practice has continued to the present time, except for a short period during the summer of 1906 when 3 cars were employed for this purpose. The 2 milk cars were handled on the morning passenger train, picking up the first one at Poultney and the second at an intermediate station between Poultney and Eagle Bridge. In the fall of 1905 defendant began operating a milk train for dealers shipping milk from these stations and others on its Saratoga division to New York City, starting from Eagle Bridge, thence northward to Castleton, thence to Whitehall, N. Y., via Saratoga, to Albany, where the milk was delivered to the New York Central for carriage to New York City. This service involved a haul of empty cans in the reverse direction of complainant's filled cans, and in the winter of 1905 complainant's loaded cars were detached from the regular passenger train and attached to this New York milk train returning empty cans as far

as Eagle Bridge. This method of operating complainant's milk cars was unsatisfactory, and resulted, as fully conceded by defendant, in an entirely inadequate service.

Operations were carried on under this arrangement till May 1, 1906, but in November, 1905, complainant was advised that beginning May 1, 1906, the rate would be \$7,300 per car per year, for one year, from Poultney and intermediate stations to Eagle Bridge, cars to be run in the regular milk-train service, the maximum number of cans to be 250, excess loaded in each car to be at the rate of 8 cents per can, or as an alternative proposition complainant was quoted a rate of 16 cents per can regardless of number shipped or number of cars. Complainant replied, "We expect to pay the new rate per car commencing on that date." The bills for transportation for the months of May, June, and July, 1906, were paid, when complainant was again advised that on account of the passage by Congress of the Hepburn Act the rate would be 16 cents per can, effective August 28, 1906, from Poultney to Eagle Bridge, but from Salem, N. Y., to Eagle Bridge the rate per car would be reduced from \$7,300 to \$6,500 to equalize the advance, making the aggregate for the 2 cars not over \$20 per day each, or the former \$7,300 per car per year rate, and effective May 1, 1907, the rate on the Salem car was to be canceled and a rate of 16 cents per can applied.

Estimating the volume of business at a carload of 250 cans per day from Poultney to Eagle Bridge, the changes in these charges were as follows:

Year.	Per car per annum.	Per car per day.	Per can.
			Cents.
1904 to 1906.....	\$4,500	\$12.33	4.9
1906 to 1907.....	7,300	20.00	8
1907.....	14,600	40.00	16

On April 30, 1907, complainant filed its petition alleging unjust discrimination, excessive and unreasonable rates, and that the service, facilities, and equipment were inadequate. The defendant answered the petition and admitted the original arrangement, the rates charged, and the increase in said charges, but denied all other allegations. A partial hearing of the case was had in New York City November 26, 1907, and shortly thereafter complainant and defendant entered into an agreement covering all the points in controversy, and filed the same with the Commission as a proposed basis for the adjustment of all the matters involved in the contention without further hearing. The agreement stipulated that the Commission should make an order "fixing and establishing the

rights and obligations of the respective parties as to the matters embraced in said petition." Following this agreement dated February 26, 1908, and before final action by the Commission upon the stipulation, defendant issued a tariff, effective April 21, 1908, purporting to be based upon the terms of the agreement, but upon a statement of accounts between complainant and defendant shortly after the issuance of said tariff a controversy arose over the interpretation of both the agreement and the tariff with respect to the charges for transportation of complainant's milk for the future.

Another hearing was had in Boston November 27, 1908, and oral arguments were made in Washington February 17, 1909, and briefs were filed by counsel for both complainant and defendant.

The gist of the controversy now is, whether or not the excess cans not numbering as many as 250, loaded upon a second car, shall be charged the per car rate of \$16 or the per can rate of 6½ cents.

The agreement upon this point provides: "Hood & Sons are to pay for the transportation of milk from Poultney, Vt., and intermediate stations to Eagle Bridge, N. Y., and return of empty cans to the stations from which they were shipped, \$16 per car per day; such payment to cover a maximum load of 250 cans of 40 quarts each in each car. For cans in excess of such maximum load Hood & Sons are to pay a rate of 6½ cents per can, which rate is to apply to cans in excess of the first maximum carload until the excess reaches an additional maximum carload of 250 cans, and to continue in that way for any additional maximum carloads of 250 cans that may be shipped."

Tariff I. C. C. No. 8765, issued March 20, 1908, effective April 21, 1908, and now in effect, provides as follows:

From Cambridge, Granville, Middle Granville, N. Y., Poultney, Rupert, Vt., Salem, Shushan, N. Y., and West Pawlett, Vt., to Eagle Bridge, N. Y., \$16 per car of 250 cans or less. Excess over 250 cans to be charged for at 6½ cents per can.

The Commission has no authority to approve or enforce a private agreement made between shippers and carriers concerning charges for transportation, nor is it bound by such an agreement when the reasonableness of such charges are challenged in the mode prescribed in the act. It follows *a fortiori* that the Commission will not undertake to interpret or construe an agreement nor to determine its legal effect, nor to say that a tariff shall be issued in compliance therewith. The force and effect of such agreements as fixing obligations between the parties thereto are to be determined by the courts, but under our rules of practice they may be regarded and used as evidence so far as pertinent to questions which the Commission may determine, and it is desirable that the facts be thus agreed upon whenever practicable. When the parties thereto agree upon a

rate, said agreement may be regarded as an admission as between the parties executing it of strong evidentiary value that the rate agreed upon is reasonable, and such evidence will be considered by the Commission together with all other facts, circumstances, and conditions that may reasonably apply to the matters under investigation, keeping in view all interests involved, and its duty to establish just and reasonable rates available for all shippers alike without discrimination in favor of any particular shipper by reason of an agreement with the carrier.

On the other hand the Commission is expressly authorized and empowered to pass upon the reasonableness of a charge for transportation or the reasonableness of any regulation or practice affecting such charge, expressed in a tariff issued by any carrier subject to the provisions of the act. The rates charged and collected must be in accordance with the tariff legally effective whether in compliance with any private agreement with the shipper or not, and the Commission must therefore look to the provisions of the tariff to ascertain the rate that has been challenged or the reasonableness of any regulations or practices affecting such rates, and to determine and prescribe upon consideration of all the evidence what will be a reasonable charge to be thereafter observed and what regulation or practice is fair to be thereafter followed.

Where the language of a tariff is ambiguous in its specifications, and when there is a reasonable doubt as to its true import and meaning, the agreement may be examined and employed as a medium of explanation of the tariff to remove the ambiguity; but in this case the tariff speaks with reasonable clearness, though it may or may not conform literally to the terms of the agreement. Taking into consideration all the evidence, obviously the purpose was to make a car rate, and that a single car should be the unit for the measurement of the service, and the excess referred to clearly means excess of cans over its load of 250 upon the same car, as it is impracticable in shipping cans of milk from different stations to require an exact number of cans to be placed upon a car short of the absolute limit of the capacity, and while a number may be specified as an approximate load for the purpose of applying a certain rate to that number, provision must be made for a variable number of cans. The car having been designated as the unit of service upon which complainant has the right to load at least 250 cans, it is no fault of the carrier, and but little, if any, saving of expense to it when complainant does not secure a full load. Should there not be in the first car as many as 250 cans, complainant would hardly contend for the 6½ cents can rate.

The record shows that the milk was shipped by complainant to Boston, Mass., and the contention of defendant that the Commission

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has no jurisdiction of its carriage from Salem, N. Y., to Eagle Bridge, N. Y., under the circumstances of this case, is without merit, except as to shipments originating in New York, the transportation of which actually and finally terminated at Eagle Bridge.

The general course of the trade carried on by complainant involves the purchase of milk at various points in Vermont and New York and its transportation via Eagle Bridge, N. Y., over the lines of the defendant and the Boston & Maine Railroad to ultimate destination in Boston, Mass. Such a course of business creates a current of commerce among the states, and the inspection or pasteurization of the milk at Eagle Bridge, N. Y., or the withdrawal of a portion of it at that point when found unmarketable at ultimate destination, is a part and incident of such commerce, and does not destroy the interstate character of the shipments except as above stated. When a commodity is purchased in and shipped from one state to a point in another state the transaction is indelibly impressed with the character of interstate commerce, and the various mutations through which the article passes and the handlings which it undergoes while in transit are merely incidental to the movement, and every carrier by railroad that participates in the carriage of any such commodity or that performs any part of the transportation in a continuous passage from a point of origin in one state to a prescribed destination in another state, is engaged in interstate commerce and subject to the jurisdiction of the act. Moreover, defendant's rates to Eagle Bridge on this traffic were expressly published as both local and proportional rates, therefore as to that part of the traffic which moves on from Eagle Bridge to Boston, they are the separately established rates of defendant for its haul to Eagle Bridge on the through interstate movement from points of origin to Boston.

Having under review all the evidence adduced in the investigation of this case it is the opinion of the Commission that the rates established by defendant for the transportation of milk, in tariff I. C. C. No. 8765, effective April 21, 1908, as hereinbefore set forth, are just and reasonable, and that the defendant should maintain rates not in excess thereof for a period of not less than two years from the effective date of the order made herein.

In regard to the less-than-carload can rate on shipments of milk from Poultney and intermediate stations to Eagle Bridge for the Boston market, it is the view of the Commission that a rate somewhat higher than the rate per can when transported in carloads is justified, but such less-than-carload rate per can should bear a reasonable and proper relation to the carload rate. As applied to the traffic here involved moving from points of origin in Vermont and New York, ultimately to Boston, the defendant's rate to Eagle

Bridge is a proportional for a comparatively small part of the entire haul and in the nature of a division of the through charge therefor. Taking into consideration all the facts disclosed by this investigation, it is the opinion of the Commission that the defendant's rate of 16 cents per can of 40 quarts each on shipments less than carloads from Poultney, Vt., and intermediate stations to Eagle Bridge, N. Y., is unreasonable and unjust to the extent that the same exceeds 10 cents per can on this traffic when destined to Boston markets.

The complainant is entitled to reparation for the amount of the difference between the former rates paid for transportation of the milk and the rates found to be reasonable herein, on shipments made since November 1, 1907, except upon shipments originating at stations in New York the transportation of which actually and finally terminated at Eagle Bridge, N. Y., upon proper proof to be adduced before the Commission. If the parties can agree upon the amount of reparation due on the basis hereinbefore stated, they may submit a stipulation in respect thereto which the Commission will consider before making an order fixing the amount of reparation. An examination of the tariff schedules on file in this office indicates that some of the arrangements hereinbefore referred to between the complainant and defendant affecting the charges paid and received for the transportation of complainant's milk were, during a portion of the time since the business began, at variance with the lawful rates. Whatever steps it may be our duty to take upon a fuller development of the facts in this respect it is not necessary in this report to make further reference thereto except to say that nothing herein said is to be understood as in anywise approving or excusing any of these arrangements not in harmony with the law.

An order will be entered in accordance with the views expressed herein.

17 I. C. C. Rep.

No. 1945.

GERMAIN COMPANY

v.

NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY
ET AL.

Submitted March 29, 1909. Decided June 22, 1909.

1. A through rate regularly published between two points and available under the tariff over several different routes is not nullified as to one such route by the failure of the participating carriers to agree upon divisions over that route.
2. Reparation awarded to complainant on account of a rate overcharge and to cover transfer and demurrage charges accruing because of the refusal of the delivering line to receive a car from its connection.

W. J. Herman for complainant.

Ed. Baxter and *R. Walton Moore* for New Orleans & Northeastern Railroad Company, Alabama Great Southern Railroad Company, and Cincinnati, New Orleans & Texas Pacific Railway Company.

F. C. Baird for Bessemer & Lake Erie Railroad Company.

S. P. Shane for Erie Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The facts involved here have been carefully set forth in a stipulation by the parties to the controversy, from which the details essential to an understanding of a somewhat peculiar situation may be stated as follows:

On about June 15, 1907, the complainant, the Germain Company, a manufacturer and dealer in lumber, with an office at Pittsburg, delivered to the first-named defendant at Ellisville, in the state of Mississippi, a shipment of lumber weighing 46,200 pounds, and received its bill of lading providing for its carriage to Greenville, in the state of Pennsylvania, and delivery there to the complainant on the tracks of the Bessemer & Lake Erie Railroad Company. In due time the car was received at Cincinnati by the Erie Railroad Company, and was hauled thence to Shenango, in the state

of Pennsylvania, arriving there on July 6, 1907. There is no physical connection between the tracks of the Erie and the Bessemer & Lake Erie at Greenville, the nearest junction of the two lines being at Shenango. Upon the arrival of the car at the latter point the local agent of the Erie notified the local agent of the Bessemer & Lake Erie of the receipt of a carload of lumber consigned to the complainant at Greenville and also advised him that delivery had been requested on the tracks of his line. He also gave notice that the shipment was held on the Erie tracks at Shenango subject to the orders of the Bessemer & Lake Erie. This notice was received by the agent of the latter line on the very day on which the car arrived at Shenango. On the day following the Bessemer & Lake Erie formally refused to take delivery of the car on the ground that the complainant could not be found at Greenville. Thereupon the local agent of the Erie Railroad Company made efforts through various lumber merchants and banks at Greenville to get some information about the consignee, but was advised that no such concern as the Germain Company was known there. These inquiries were pursued actively from July 6 to July 11.

As a matter of fact the complainant had sold the lumber to the Bessemer & Lake Erie Railroad Company and had undertaken to make delivery at Greenville, and to pay all charges through to that point. On June 17, being only two days after the shipment had moved from Ellisville, the complainant forwarded to the agent of the Bessemer & Lake Erie at Greenville an order described in the stipulation as a railway delivery order. This document authorized the delivery of the lumber to the chief engineer of the Bessemer & Lake Erie Railroad Company. That the shipment was intended for that company was not indicated, however, on the bill of lading, nor was the fact brought to the attention of any of the carriers participating in the movement, including the Erie, until August 13, 1907, and then only as the result of inquiries that had been set on foot by the latter company to ascertain the complainant's address. As soon as these inquiries reached the Germain Company, it explained that the lumber was for delivery to the Bessemer & Lake Erie Railroad Company; and thereupon the Erie turned the shipment over to that company at Shenango, and it thus reached Greenville and delivery was tendered to its chief engineer on August 19.

The shipment from Ellisville was made in a Seaboard Air Line car and the lumber remained in that car at Shenango from July 6 to August 3, when, in order to release the car and stop the running of per diem charges, the Erie transferred the lumber to one of its own cars. The cost of the transfer was \$9, and the payment of this amount by the complainant was insisted upon. Another charge

which the complainant was compelled to pay was a bill of \$31 for car service assessed by the Erie for the detention of the car on its tracks at Shenango until August 16. In addition to these two items, the complainant was compelled to pay the freight charges from Shenango to Greenville, amounting to \$13.86. The charges from the point of origin to Shenango were assessed at \$147.87. The total charges on the movement amounted, therefore, to \$201.73, but the petitioner insists that the item of \$147.87 was the only item that could lawfully be assessed against it under the circumstances, and that there was therefore an overcharge on the shipment of \$53.86. For this amount it asks for a reparation order.

There was in effect from Ellisville to Shenango a rate of 32 cents per 100 pounds, which all the parties to the proceeding in their stipulation of facts seem to agree was not applicable to Greenville over the actual route of the movement because there were no agreed divisions among the participating carriers over that route. A stipulation as to almost any fact is ordinarily accepted by us as conclusive; but as the Commission is charged with the enforcement of the lawful rates we are not able at all times to accept the views of the parties before us as to what in fact is the lawful rate between given points on a specified commodity. And this is such a case. All the carriers participating in the movement were parties to a tariff naming a joint through rate on lumber from Ellisville to Greenville of 32 cents per 100 pounds. North of Cincinnati the tariff specified no routing, and this, as we understand the law, left the rate in effect over all reasonably direct routes between the points in question over the lines of the carriers lawfully named as parties to the tariff. The fact that the carriers, by which the rate had been lawfully published and advertised to the shipping world as the cost of transportation between two given points over all reasonably available routes, have neglected or failed to agree upon divisions of the rate over one of the routes can not be accepted by the Commission as equivalent to a nullification of the published through rate over that route. Divisions are matters of private agreement and for that reason, generally speaking, are of no special concern to shippers, nor are they essential to legalize a published through rate. Notwithstanding the fact, therefore, that divisions had not been agreed upon we find that the rate of 32 cents per 100 pounds above referred to was applicable over the actual route of the movement as a joint through rate from Ellisville to Greenville. Even if the 32-cent rate, in the absence of agreed divisions over the route of the movement, could be said as a matter of law not to apply over that route, the complainant would nevertheless have been entitled to a final adjustment of the freight charges on

that basis; for the defendants received the shipment without routing instructions and ought, in such case, to have forwarded it over a route taking the 32-cent rate instead of over a route that required the collection of a higher combination rate based on the locals into and out of Shenango. It follows that the collection of \$13.86 as charges for the movement from Shenango to Greenville was an overcharge and this amount the complainant is entitled to recover. In this connection it may be well to say that Greenville is but two miles beyond Shenango.

The complainant, having sold the lumber to the Bessemer & Lake Erie Railroad Company, gave proper and prompt notice, by means of a delivery order, to its local agent at Greenville that the car was intended for delivery to the chief engineer of that road. It is admitted that this notice was received in due time. We do not see what further steps or better means the complainant could have taken to put the Bessemer & Lake Erie on notice that the car contained lumber purchased by it and was for delivery to its chief engineer. As the car was destined to Greenville we do not see that the complainant is fairly chargeable with any neglect or omission of duty in not giving such notice also to the agent of the Bessemer & Lake Erie at Shenango. There were apparently several lines that could have taken the car from Cincinnati by reasonably direct routes to junction points with the Bessemer & Lake Erie; the complainant had given no routing instructions, and therefore had no reason to know that the car would get into possession of the Erie Railroad and would pass through Shenango on its way to Greenville. Under all the circumstances it is clear that the additional charges imposed upon the shipment resulted from no neglect or fault on the part of the complainant.

On the whole record we have reached the conclusion, and so find, that the Bessemer & Lake Erie Railroad Company was solely at fault in the premises and is liable to the complainant for the sum of \$53.86, with interest, being the excess charges which the complainant was compelled to pay at destination because of the refusal of the Bessemer & Lake Erie to accept the car at Shenango when properly tendered to it by the Erie Railroad Company. The order to be entered will, of course, provide that the Bessemer & Lake Erie shall have recourse on its connections for a proper division of the through charges on this shipment, assessed on the basis of the through rate of 32 cents to Greenville, and the Commission will determine the amount of its division in case of the failure of the defendants to agree upon the amount among themselves.

Some question is raised on the record as to the authority of the Erie to make a charge of \$9 for transferring the lumber to its own

car in order to save per diem charges on the foreign car in which it received the shipment; there is also strong doubt in our minds as to the authority of the Erie under its published tariffs to assess demurrage charges on a car detained on its line because of the refusal of its connection to accept it for movement to destination. But neither of these questions is before us on this record and they are not therefore considered. On whatever basis those items are finally adjusted as between the two carriers the full burden must be borne by the Bessemer & Lake Erie, because it alone was at fault in the premises.

An order will be entered in accordance with these conclusions.

17 I. C. C. Rep.

No. 1768.
GEORGE L. MUNROE & SONS
v.
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted March 24, 1909. Decided June 22, 1909.

Demurrage charges collected on one carload of ashes shipped from Bay City, Mich., to Williamson's siding, Norfolk, Va., were without warrant of tariff authority and therefore wrongfully imposed. Reparation awarded.

George L. Munroe and George H. Munroe for complainants.
R. Walton Moore for Norfolk & Western Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainants are dealers at Oswego, N. Y., in unleached hard-wood ashes, used as fertilizers. August 24, 1907, they shipped a carload of ashes from Bay City, Mich., to "Williamson's siding, Norfolk, Va., on Norfolk & Southern Railway" over defendants' lines of railway. For reasons which hereinafter appear delivery was not made at Williamson's siding until twenty-four days after the arrival of the car at Norfolk. Complainants were required to pay \$23 demurrage, which they did under protest, and bring this complaint to recover what they allege to be an unreasonable charge. The ashes weighed 30,000 pounds and moved under a 40,000-pound minimum, and the car was shipped under the following circumstances:

The ashes were purchased by complainants at Bay City and there loaded in a car which was tendered to the Michigan Central. That road issued a bill of lading in usual form containing the recital that George L. Munroe & Sons were the consignors and that the property was consigned to "George L. Munroe & Sons, Williamson's siding, Norfolk, Va., on the Norfolk & Southern Railroad." This bill was signed by the agent of the Michigan Central. It was on its face a through billing to destination and named a through rate of 20 cents per 100 pounds on the shipment in question. The car arrived at Norfolk September 3, 1907, and the agent of the Norfolk & Western

addressed, in usual course, a postal card to George L. Munroe & Sons, Norfolk, Va., advising them of the arrival of the car, and that delivery would be made on the payment of \$80, or 20 cents per 100 pounds. The consignees were unknown to the agent at Norfolk and he was unable to locate them. September 9 he made an unclaimed report to the agent at Valley Crossing, Ohio, the point of interchange with the Hocking Valley Railroad, which was the intermediate carrier between the Michigan Central and the Norfolk & Western. September 12 the Norfolk & Western agent at Valley Crossing notified the agent of the Hocking Valley that the car received from that road was at destination undelivered and unclaimed and requested that disposition orders therefor be furnished. No orders were received from the Hocking Valley. October 6 the Imperial Guano Company, of Norfolk, notified the Norfolk & Western agent at Norfolk that they would handle the car, and on October 9 that concern paid the freight, amounting to \$80, and also, under protest, paid the demurrage charge of \$23. They ordered delivery to the Norfolk & Southern. It is stated by the Norfolk & Western that the car was not turned over to the Norfolk & Southern immediately on its arrival at Norfolk for delivery at Williamson's siding for the reason that the siding, which is just outside the switching district of Norfolk, is a prepay point on the Norfolk & Southern and the charges up to Norfolk had to be paid before delivery could be there made.

It appears that August 15, 1907, complainants received an order from the Imperial Guano Company for 15 tons of wood ashes for delivery to W. C. L. Williamson, and this shipment was consigned to complainants, as is the custom in their business, to fill that order. August 26 complainants notified the Norfolk & Southern agent at Norfolk, it appearing on the billing that the point of delivery was on the line of the Norfolk & Southern, that on arrival of the car the same should be delivered to W. C. L. Williamson, Williamson's siding, Norfolk, Va. It further appears that numerous shipments of wood ashes had been made by complainant from Bay City for Williamson's siding in Norfolk under substantially similar billing, except that the route was over different lines, and delivery was always promptly made.

As we see this transaction the demurrage charges accrued through no fault of the shippers. The Michigan Central gave them a through bill of lading at the point of shipment on a through rate to destination. The demurrage charges were collected by the Norfolk & Western for detention of the car upon its tracks. It is stated in behalf of that carrier that delivery could not be made by it to the Norfolk & Southern, because charges were not prepaid to the point of delivery named in the bill of lading. Demurrage as a general rule is assessable against a carload shipment only at point of origin or destination, or

at a reconsigning or transit point. We see no reason to doubt that an intermediate carrier by proper provisions in its tariffs may lawfully establish demurrage charges against a carload shipment which it is compelled to hold on its lines on account of the refusal of a connecting line to accept it for movement to destination because charges are not prepaid; but a charge of this character is not the usual practice of carriers and if established must be published in its tariffs in terms that admit of no doubt or ambiguity.

It is contended by the Norfolk & Western that Rule 3 of its tariff, I. C. C. 3057, makes provision for the demurrage charges assessed in this case. The rule is as follows:

Unless otherwise specifically provided for in these rules, cars held for purposes other than loading or unloading for which the shipper or consignee and not the carrier is responsible shall be subject to car-service charges at the expiration of twenty-four hours from the time of arrival at point of stoppage.

It is clear that this rule has no application to the circumstances of this case, where delivery was not made because the shipment was not prepaid. We fail to find any published rule in the tariffs of the Norfolk & Western which provides for a demurrage charge of the character here in question.

We hold that the demurrage charges in this case were without warrant of tariff authority and therefore wrongfully imposed by the Norfolk & Western. An order for reparation in the sum of \$23, with interest, will be issued against that carrier in favor of complainants.

17 I. C. C. Rep.

No. 1431.

ACME CEMENT PLASTER COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY
COMPANY ET AL.

Submitted January 11, 1909. Decided June 24, 1909.

1. The complaint in this case alleges the unreasonableness of defendants' carload rates on the manufactured products of gypsum rock from Grand Rapids, Mich., to all points in Official and Southern Classification territory, the state of Wisconsin, and that part of Illinois which is in Western Classification territory; *Held*, That upon all the facts and circumstances disclosed by the record the present rate adjustment can not be found unreasonable.
2. The Chicago-New York base rate on products of gypsum rock was raised June 1, 1907, from 22½ cents to 25 cents per 100 pounds, and on April 20, 1908, was reduced to 22½ cents. This reduction took place after the complaint was filed. It appears that the 22½-cent rate had been maintained for a long time prior to the advance and has been continuously maintained since the reduction. The defendants have made no attempt to explain or justify this advance, and the only fact appearing in relation thereto is that it was made and enforced for about eleven months; *Held*, That under these circumstances the 25-cent base rate was unreasonable as applied to these commodities, and that on shipments made while it was in effect complainant is entitled to reparation. On this record, however, no order for reparation can be made, but the case will be held open to give complainant opportunity to make the necessary proof.
3. It is a matter of common knowledge that freight rates are controlled by various and varying conditions, and therefore the rates established in one section furnish no reliable standard by which to measure the reasonableness of rates in another section where dissimilar conditions prevail.
4. It is well settled that the divisions accepted by a carrier can not be taken as the measure of the reasonableness of its separately established rates.
5. The Commission is disposed to encourage the making of class rates wherever practicable, because of their tendency to uniformity and stability. It is only in cases where it clearly appears that the inclusion of a given article in a class results in unreasonable charges, and a lower classification will not meet the demands of justice, that commodity rates are required to be established.
6. It is manifest that the rail carriers from Grand Rapids ought not to be required to make rates to meet water competition or to equalize for complainant the advantages of a business rival which moves its product to Chicago by its own water line.
7. While the amount shipped by a concern has little or no bearing on the question of the reasonableness of the rates, it is of some significance where the shipments reach substantial proportions.

S. H. Cowan for complainant.

O. E. Butterfield, F. J. Jerome, and Clyde Brown for Lake Shore & Michigan Southern Railway Company.

James H. Campbell for Grand Rapids & Indiana Railway Company; Pennsylvania Company; Pennsylvania Railroad Company; Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company, and Vandalia Railroad Company.

Charles McPherson for Pere Marquette Railroad Company.

F. J. Noonan for Grand Trunk Western Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The complaint in this case alleges the unreasonableness of defendants' carload rates on the manufactured products of gypsum rock from Grand Rapids, Mich., to all points in Official and Southern Classification territory, the state of Wisconsin, and that part of Illinois which is in Western Classification territory. Reparation is asked.

Complainant is a corporation engaged in the business of mining gypsum rock and manufacturing its products. The main offices of the company are in St. Louis, Mo. It has one plant at Grand Rapids, which was constructed in the fall of 1904, two in Texas, one in New Mexico, one in Wyoming, and two in California. It owns or controls lands near its various plants which contain beds or deposits of gypsum rock. The rock is mined and manufactured into products known to the trade and described in the tariffs of defendants by different names, viz: adamant wall plaster, calcined plaster, dried mortar, fishack wall plaster, land plaster, plaster of paris, stucco, and wall plaster. For the purposes of this report the term "wall plaster" will be used generically to include the various products of gypsum rock taking the rates which are the subject of complaint.

Gypsum rock takes lower rates than its products, is broken as it comes from the mine, sold in bulk, and largely used as an ingredient in the manufacture of cement. No complaint is made of rates on the rock. The manufacturing process consists in boiling and pulverizing the rock as it comes from the mine. Certain products require small quantities of other substances. Practically all of the output of complainant's plant at Grand Rapids is sold as wall plaster or shipped in bulk as rock. Wall plaster manufactured by complainant and its competitors is used to plaster fine residences and large buildings, or as a finish on a coat of ordinary lime mortar. It is also used in making wall moldings and decorations in residences, office buildings, and other large structures. Complainant sells only an unimportant part of its product for fertilizing purposes.

It costs about \$2 per ton to mine, manufacture, and prepare wall plaster for shipment. The product of complainant's plant at Grand

Rapids at the time the complaint was filed and since has sold at from \$3 to \$3.50 per ton in Central Freight Association territory. It is packed in cloth or paper bags for shipment and can be readily loaded to 10 per cent above the marked capacity of cars. Manufacturers of wall plaster sell their product under distinctive or copyrighted brands. Certain brands command comparatively high prices because of the established reputation of the product.

Wall plaster has been manufactured in Grand Rapids since 1859. There are a number of concerns engaged in the business at that point, namely: Grand Rapids Plaster Company, Michigan Plaster Company, American Cement Plaster Company, Gypsum Products Manufacturing Company, and United States Gypsum Company. Three and a half miles from Grand Rapids are located plants of the United States Gypsum Company and the Michigan Plaster Company. Products of these plants take Grand Rapids rates.

Complainant's plant at Grand Rapids has a capacity of 60,000 tons of wall plaster per annum and about one-half that amount is manufactured and sold. Complainant ships from 10 to 15 per cent of the total output of wall plaster at Grand Rapids.

Deposits of gypsum are found east of the Mississippi River and north of the Ohio and Potomac rivers at Grand Rapids and Alabaster, Mich., Port Clinton, Ohio, Syracuse and Oakfield, N. Y. Wall plaster is manufactured at plants on Staten Island and Long Island, N. Y., from rock brought by water from Nova Scotia and from rock mined at Syracuse and transported via canal and river. West of the Mississippi gypsum deposits are found in Iowa, Wyoming, Texas, Oklahoma, and other mountain states and in the territories. The United States Gypsum Company, which is known as the "trust," sells more wall plaster in the territory in question than any other manufacturer and has plants at Fort Dodge, Iowa, Grand Rapids and Alabaster, Mich., Port Clinton, Ohio, and Oakfield, N. Y.

At the present time wall plaster moves from Grand Rapids to all points in Central Freight Association territory on commodity rates which are 83½ per cent of sixth class rates. To Trunk Line territory rates are made according to the Grand Rapids percentage (96) of the Chicago-New York basing rate. When this complaint was filed, February 18, 1908, the Chicago-New York rate was 25 cents. This rate became effective June 1, 1907, and was an advance of 2½ cents per 100 pounds over the rate that had previously obtained for a long period. April 20, 1908, the Chicago-New York rate was reduced to 22½ cents, which is the rate now in effect.

With respect to Trunk Line territory complainant contends that rates from Grand Rapids to New York should not exceed 18 cents per 100 pounds, and asserts that an 18-cent rate would permit the Grand

Rapids product to compete at eastern consuming points with the New York and Ohio product. This very likely might be the case provided the reduction from Grand Rapids were not followed by corresponding reductions from other points of origin. Rates from Grand Rapids to Trunk Line points and to the Virginia cities now conform to the mileage scale which has long been applied to practically all commodities from Central Freight Association territory. It is urged by complainant that deposits of gypsum in Official Classification territory are few in number and so located that commodity rates made to meet the conditions existing at each manufacturing point would result in justice to each and permit from each a reasonably wide distribution. We are not convinced of the soundness of this contention. So far as appears this business is carried on at the several producing points in this territory under practically similar conditions and therefore the application of the base rate on a mileage scale presumably works out a greater degree of relative justice as between the various plants than could be expected to result from commodity rates established by the different carriers. While there are some inequalities resulting from the base rate scaled down to points between Chicago and New York, experience seems to show that on the whole the present adjustment operates without undue discrimination between different shippers and localities. Any considerable reduction in Grand Rapids rates, or such a reduction as is asked by complainant, without corresponding reductions from other points, would apparently lead to discriminations which do not now exist. Manifestly, a reduction in the Chicago-New York rate followed by a proportionate reduction to all points based thereon would leave the relation of rates the same as now and be of little or no benefit to complainant. So far as Trunk Line territory is concerned, shippers from Grand Rapids must do business in competition with manufacturers at Port Clinton, Oakfield, and New York City under geographical disadvantages which can not well be overcome by any proper adjustment of transportation charges.

It is alleged by complainant that the base rate in question is too high and results in unreasonable charges from Grand Rapids to Trunk Line points and to the Virginia cities. In support of this contention tables were submitted, showing a comparison of rates from producing points in the west to certain Missouri and Mississippi river and other destinations with rates for similar or less distances from Grand Rapids to various destinations in Official and Southern Classification territories. From the fact that these tables indicate that the western rates are lower per ton per mile it is argued that the rates in question are too high. But this argument is of comparatively little weight in the absence of any disclosure of the circumstances under which the

western rates were made or the reasons which induced the western carriers to accord them. It is a matter of common knowledge that freight rates are controlled by various and varying conditions, and therefore the rates established in one section furnish no reliable standard by which to measure the reasonableness of rates in another section where dissimilar conditions prevail. It appears that the rate of 30 cents per 100 pounds from Acme, N. Mex., to Baltimore, Md., was established at the instance of complainant and on the representation that a large movement of wall plaster would be induced thereby on account of the rebuilding of the city of Baltimore after the great fire in 1904. Since the complaint was filed this rate has been increased $8\frac{1}{2}$ cents per 100 pounds.

The further argument is made that inasmuch as rates from western to eastern points break at the Mississippi River, and the eastern roads accept one-half the through rate as their proportion, the relatively higher charge on this traffic from Grand Rapids is not justified. It is stated that defendants accepted 15 cents per 100 pounds for transporting wall plaster from St. Louis to Baltimore, and this amount scaled to Grand Rapids would give that point a $12\frac{1}{2}$ -cent rate to New York. The fact appears to be as alleged; but this 15 cents was part of a through rate, and it is well settled that the divisions accepted by a carrier can not be taken as the measure of the reasonableness of its separately established rates. Moreover, this Baltimore rate seems to have been made for special and temporary reasons and has since been materially advanced, as above stated.

The present rate from Grand Rapids to New York yields 5.2 mills per ton per mile, which is less than the average ton-mile rate on all traffic between Central Freight Association points and Trunk Line points. Upon consideration of all the facts and circumstances we are not prepared to find that wall-plaster rates from Grand Rapids to points in Trunk Line territory and the Virginia cities are unreasonable.

This conclusion has reference to existing rates. As before stated, the Chicago-New York base rate was raised June 1, 1907, from $22\frac{1}{2}$ cents to 25 cents per 100 pounds, and on April 20, 1908, was reduced to $22\frac{1}{2}$ cents. This reduction took place after the complaint was filed. It appears that the $22\frac{1}{2}$ -cent rate had been maintained for a long time prior to the advance and has been continuously maintained since the reduction. The defendants have made no attempt to explain or justify this advance, and the only fact appearing in relation thereto is that it was made and enforced for about eleven months. Under these circumstances the presumption is, and we find, that the 25-cent base rate was unreasonable as applied to this

commodity. On shipments made while it was in effect complainant is entitled to reparation. On this record, however, no order for reparation can be made, but the case will be held open to give complainant opportunity to make the necessary proof. This proof should consist of a verified statement from complainant's books showing the date and weight of each shipment, the route over which it moved, the date when payment was made, and the amount of the claimed overcharge. It is suggested that shipments be grouped as to routes and submitted to the accounting officers of defendants for comparison and agreement as to dates, weights, etc. Upon receipt of such a statement an appropriate order for reparation will be issued.

We now turn to the question of the reasonableness of rates on wall plaster from Grand Rapids to points in Central Freight Association territory. Rates to this territory are made uniformly $83\frac{1}{2}$ per cent of sixth class. It appears that prior to April 14, 1904, they were $73\frac{1}{2}$ per cent of sixth class. Complainant contends that fixing the rate on this commodity at a certain per cent of sixth class is not justified either by commercial or transportation conditions. It is insisted that this traffic should be accorded special commodity rates which will enable complainant to meet competition from Fort Dodge, Iowa, and other points and sell its products throughout a more extended territory than it claims to be able to reach under existing rates. In this connection is to be remembered that wall plaster has been produced at and shipped from Grand Rapids for fifty years. For a long period of time it has been carried in Central Freight Association territory either at sixth class or under commodity rates which are a uniform percentage of that class, and it may be presumed that business conditions have become adjusted to this system and relation of rates. It would seem plainly undesirable to disturb a method of rate making so long established and so generally satisfactory without convincing proof of its injustice.

It is obvious that where rates on a particular commodity bear a uniform relation to rates of a certain class, any inequalities in those rates as between different places are those peculiar to that class. A finding, therefore, that rates on such commodity, made to conform to a class, are relatively unjust would inferentially condemn the adjustment with respect of the entire class, and this is also true of the reasonableness of the rates. The Commission is disposed to encourage the making of class rates wherever practicable, because of their tendency to uniformity and stability. It is only in cases where it clearly appears that the inclusion of a given article in a class results in unreasonable charges, and a lower classification will not meet the demands of justice, that commodity rates are required to be established.

The sole question here is whether rates which are 83½ per cent of sixth class are unjust and unreasonable as applied to the transportation of wall plaster from Grand Rapids to points in the territory in question. Complainant contends that these rates are unreasonable because lower rates (73½ per cent of sixth class) are made generally throughout this territory on cement which is shipped and transported under similar circumstances and conditions and commands a somewhat higher price. It is admitted that a charge of undue discrimination may not be predicated on the lower cement rates because the commodities are not competitive. It is argued, however, that the acceptance by the carriers of 73½ per cent of sixth class for the transportation of cement is an admission that such rate is remunerative and therefore the higher rate on wall plaster is unreasonable. In answer to this the carriers assert that the volume of traffic in cement is very much larger than in wall plaster, and that inbound shipments of coal and other commodities to cement mills are much greater than to wall-plaster plants. It is also asserted that cement mills are widely distributed throughout the territory in question and that shipments move continuously between numerous points. In explanation of the low rates on cement to Chicago from points on the Pere Marquette north of Grand Rapids, defendants say that these rates were made to encourage the industry of manufacturing cement from marl beds near the lake, that experience has shown that marl cement can not compete with lime and slag cement which is produced so largely in this territory, and that the industry has proven unsuccessful.

Complainant also asserts that wall plaster is carried in a lower class in Southern and Western Classifications than cement, while in Official Classification territory wall plaster is classified higher. So far as the three classifications are concerned, the two commodities are carried substantially in sixth class. While it appears that rates on cement from points of origin in the west to certain points on the Mississippi and Missouri rivers are lower, mileage alone considered, than rates from producing points to consuming points in Central Freight Association territory, we are not informed as to the reasons for making the western rates or the conditions of transportation, etc., obtaining there, and therefore this fact can have but little bearing on the question of the reasonableness of the rates under consideration.

Complainant further contends that the rate of 8 cents per 100 pounds made by western carriers not parties to this proceeding from Fort Dodge, Iowa, to Chicago, a distance of 374 miles, is evidence that the rate of 7½ cents from Grand Rapids to Chicago, a distance of 175 miles, is unreasonable. Tariffs of the roads serving Fort Dodge show

that the 8-cent rate applies only on a 60,000-pound minimum. Where a lower minimum is provided a rate of 12½ cents per 100 pounds applies. The minimum prescribed by the carriers serving Grand Rapids is 40,000 pounds. It is stated in behalf of complainant that it has made practically no sales in Chicago, the second largest consuming point in the country, and that its location so near this important market justifies lower freight rates. A further reason assigned for the failure to make sales in Chicago is that shippers from Grand Rapids are required to pay switching charges in that city which are not exacted of Fort Dodge shippers. There is no proof to sustain this statement. Examination of the tariffs of defendants serving Grand Rapids and those serving Fort Dodge shows that each has substantially the following provision respecting switching in Chicago:

The rates named herein will apply from and to the tracks of the Pere Marquette Railroad, also from and to the tracks of connecting lines, when authorized in the published switching tariffs in effect at point of shipment and destination and which are on file with the Interstate Commerce Commission. As to traffic destined to points beyond the tracks of this company, reference is made to the rules and regulations of the delivering road.

J. F. Tucker's tariff, I. C. C. No. 101, effective April 12, 1909, a subsequent issue of I. C. C. No. A-2050, shows both the Fort Dodge and the Grand Rapids roads as parties and contains numerous provisions governing the absorption of switching charges at Chicago. In the absence, however, of specific information as to the delivery referred to, no determination can be reached as to whether switching charges are absorbed in the rate from Grand Rapids or from Fort Dodge. In any event it appears that provisions respecting switching charges are the same from both points.

The United States Gypsum Company at Alabaster, Mich., takes its product over its own rails a short distance from its plant to the lake, and owns a line of boats running to Chicago where the product is turned over to mixing plants to be prepared for use. That company presumably reaches Chicago in this way at a low cost of transportation, and this may account for the inability of complainant to make sales in that market. But it is manifest that the rail carriers from Grand Rapids ought not to be required to make rates to meet water competition or to equalize for complainant the advantages of a business rival which moves its product to Chicago by its own water line. It is also asserted that the bed of gypsum at Fort Dodge is much thicker than that at Grand Rapids and easier to mine and manufacture. These, of course, are natural advantages which the carriers can not fairly be expected to overcome by reducing their rates.

Complainant asserts that a reduction of the rate to Chicago to 5 cents per 100 pounds, with corresponding reductions to other points in Illinois and to points in Indiana and the territory south of the Ohio River, would enable it to do a much larger business at a reasonable profit. Concededly this might be the case, but it does not follow that the present basis is unreasonable. Under existing rates complainant's shipments have steadily increased. It appears that from Grand Rapids complainant has made shipments to points in Official and Southern Classification territories as follows: In 1905, 36 cars; in 1906, 263 cars; in 1907, 545 cars, and in 1908, up to May 23, 254 cars. While the amount shipped by one concern has little or no bearing on the question of the reasonableness of these rates, it is of some significance that complainant's shipments to the territory in question have already reached such substantial proportions.

Complainant also argues that the rates from Grand Rapids to Chicago, various other Illinois points, and points in Indiana yield a high revenue per ton per mile and are on that account shown to be excessive. It is pointed out that $7\frac{1}{2}$ cents per 100 pounds, Grand Rapids to Chicago, yields 8.4 mills per ton per mile via the short line, which is greater than the average revenue received from all freight in the territory in question for about the same average haul. The average ton-mile earnings of the Pere Marquette for the year 1908 were 7.12 mills, and of the Lake Shore & Michigan Southern 5.22 mills. Measured by this standard alone the rate to Chicago seems to be high. The distance, however, is short and the minimum low. At the minimum loading earnings per car are only \$30. It is to be remembered also that the wall-plaster rate is lower than rates on all commodities included in sixth class between Grand Rapids and Chicago. Therefore, if we find the wall-plaster rate unreasonable because it yields a high ton-mile revenue we would, by inference at least, condemn rates on all commodities in the sixth class for the same reason. The rates to Chicago are on the same basis as to all other points in Central Freight Association territory. Rates south of the Ohio River are made up generally of the through rate to the river plus the local beyond. This adjustment has been maintained for many years and was in effect when complainant erected its plant at Grand Rapids. Port Clinton and Fort Dodge manufacturers are not before us and have not been heard on the question of the effect upon their interests of a reduction in rates from Grand Rapids.

It is further asserted that rates have been adjusted throughout this territory so as to unduly favor the United States Gypsum Company. This we do not find to be true. That company has factories located at several different points from Fort Dodge east,

as above stated, and inasmuch as the rates are on a uniform basis there is no apparent ground for charging the defendants with unjust discrimination against any locality or producer in the territory in question. Upon full consideration and taking into account all the facts and circumstances which have been brought to our attention, we are unable to find any sufficient reason for excepting wall plaster produced at Grand Rapids from the rate adjustment which has long prevailed throughout this territory.

17 I. C. C. Rep.

No. 1082.

FEDERAL SUGAR REFINING COMPANY OF YONKERS
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted June 23, 1908. Decided June 24, 1909.

Defendants have prescribed limits in and about New York Harbor within which they will, for the flat New York rate, perform the service of transporting traffic between their rail terminals on the Jersey side of the Hudson and points in the harbor. At Yonkers, N. Y., some distance north of the free-lighterage limits, complainant operates a sugar refinery, and to make shipments therefrom over defendants' lines it must lighter the sugar from its refinery to points within the lighterage limits or forward it via the New York Central to Sixtieth street, New York. By the latter route it can obtain the New York rate, but the route is said to be unsatisfactory by reason of delays in the New York Central's city terminals. One of the defendants' leased terminals in Brooklyn is owned and operated by the same partnership which operates a sugar refinery in competition with complainant, the sugar from this refinery passing through the terminal and the partnership receiving from defendants for lighterage thereof the same amount allowed for lighterage of other freight by the same terminal company. It is claimed by complainant that upon shipments delivered by it to defendants' Jersey rail terminals it should receive the same allowance that is made to companies lightering freight from points in New York Harbor, or that the lighterage limits should be extended to include Yonkers. *Held:*

1. By their lighterage regulations defendants have, in the only available manner, extended their lines to New York, but such extension results from the exercise of business discretion, not from compliance with any requirement of the act to regulate commerce; and by such extension defendants incur no liability, under the act, to extend their lines to Yonkers or other near-by communities.
2. The identity of ownership between the Jay Street terminal in Brooklyn and the adjoining refinery in Brooklyn is a relationship which should be subjected to the closest scrutiny. The only inference which can be drawn from the present record is that the Jay Street terminal does not earn in excess of a reasonable return upon the investment. The 15th section of the act clearly implies that a just and reasonable allowance may be made to the owner of property transported, when such owner renders a service connected with or furnishes an instrumentality used in the transportation, and nothing has been made to appear which indicates that the allowance in question exceeds the authorized measure of compensation. Complaint dismissed without prejudice.

Ernest A. Bigelow and Henry A. Wise for complainant.

Hugh L. Bond, jr., for Baltimore & Ohio Railroad Company.

Robert W. de Forest and Jackson E. Reynolds for Central Railroad Company of New Jersey.

William S. Jenney and Douglas Swift for Delaware, Lackawanna & Western Railroad Company.

George F. Brownell for Erie Railroad Company.

J. F. Schaperkotter and Frank H. Platt for Lehigh Valley Railroad Company.

John B. Kerr for New York, Ontario & Western Railway Company.

George Stuart Patterson for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This complaint alleges in substance that defendants' regulations in respect to the lightering of freight in and about New York Harbor subject complainant to the payment of unreasonable transportation charges upon shipments of sugar from Yonkers, N. Y., to points upon defendants' lines and unduly discriminate in favor of sugar refineries within the lighterage limits of New York Harbor. Reparation is asked.

Defendants are common carriers subject to the act to regulate commerce. Complainant is a corporation organized under the laws of New York, engaged at Yonkers, N. Y., in refining sugar. Its refinery is situated upon the east bank of the Hudson River and includes about 500 feet of water front, where it has docks, bulkheads, and other facilities for handling and shipping its product by vessel. Complainant began to refine sugar in 1902 and its maximum capacity is now about 5,000 barrels per day. Its actual daily output has apparently averaged between 3,000 and 4,000 barrels, or 30 to 40 carloads.

There are three principal routes by which complainant can ship its product from Yonkers. It has sidetrack connection with the New York Central Railroad and ships the greater part of its product to points conveniently accessible via that line and its connections. To southern and southwestern points it can ship via the coastwise steamship lines and their southern rail connections. When shipping over these water and rail routes complainant lighters its own shipments from Yonkers to the New York piers of the coastwise lines, and is given for such service an allowance out of the through rate which varies according to the destination of the shipment, but appears on the whole to cover the expense of lighterage and in some instances to leave a profit to complainant. To points on defendants' lines which can not be conveniently reached by routing north over the New York Central defendant can ship south over that line. In such case shipments are carried by the New York Central to Sixtieth street, thence floated across New York Harbor and delivered to defendants at their depots on the west side of the river. The rates from Yonkers to points on defendants' lines via this route are in

most instances the same as the rates from New York to the same destinations. But complainant alleges that the delay involved in handling shipments via this route is so great as to make its use commercially impracticable. It is said that, owing to the congestion of traffic in the yards of the New York Central in New York, ten days on the average are consumed in transporting a car from Yonkers to defendants' terminals. It is also asserted that the New York Central does not and can not furnish sufficient cars to care for complainant's shipments. For this reason, it is alleged, complainant hires the Ben Franklin Transportation Company to lighter from its refinery at Yonkers to defendants' freight depots on the Jersey shore shipments requiring transportation over their lines, and pays for this service 3 cents per 100 pounds. And this situation, in connection with defendants' lighterage regulations in respect of traffic passing across New York Harbor, gives rise to this complaint.

Defendants have established so-called lighterage limits in and about New York Harbor; that is to say, they have prescribed limits within which they will, at the flat New York rate, receive and deliver traffic at points in New York Harbor. The free lighterage limits are defined in the tariffs of all the defendants as follows:

NORTH RIVER.

New York side: Battery to One hundred and thirty-fifth street.

New Jersey side: National Storage docks, Communipaw, to and including Fort Lee, N. J.

EAST RIVER AND HARLEM RIVER.

New York side: Battery to Jerome Avenue Bridge, including Harlem River side of Wards and Randalls islands.

Brooklyn side: From Pot Cove, Astoria, to and including Newtown and Dutch Kills Creeks, and points in Wallabout Canal west of Washington Avenue Bridge and to Hamilton Avenue Bridge, Gowanus Canal, and to and including Sixty-ninth street, South Brooklyn (Bay Ridge).

NEW YORK BAY.

Points on north and east shore of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island.

Points on the New Jersey shore of New York Bay and on the Kill van Kull between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, Staten Island.

The practical effect of the lighterage service established by defendants is to extend their lines to New York and Brooklyn instead of stopping at the western side of the Hudson. In some instances the piers to and from which freight is lightered are the property of individual lines; others are used as union terminals by all the defendants. In case of certain bulky articles requiring special equipment defendants do not perform the lighterage service themselves, but make an allowance to outside lighters which perform that service for them.

The Jay Street terminal and the Brooklyn Eastern District Terminal, in Brooklyn, are in the nature of union terminals and are designated as regular terminals of defendants in all their lighterage tariffs except those of the Pennsylvania Railroad Company, which has its own freight station adjoining the Brooklyn eastern district terminal and handles freight through that terminal only to a limited extent. The two terminals mentioned are owned by independent concerns with which defendants have contracts, substantially alike, which in fact make them the terminals of defendants for all purposes of receiving and delivering general freight from and to large shipping districts in Brooklyn. Defendants pay these terminals for their service 4½ cents per 100 pounds on all shipments handled through the terminals originating at or destined to points west of defendants' western termini, and 3 cents per 100 pounds upon shipments originating at or destined to said western termini or points east thereof. The two terminal companies, under these contracts, lighter or float eastbound freight from defendants' rail terminals to their respective terminals in Brooklyn and deliver it to consignees. They receive westbound freight from shippers and lighter or float it to the west bank of the Hudson. They assume full responsibility for all eastbound freight upon receiving it from the railroads and for all westbound freight until delivered to the railroads, and agree to indemnify the roads for all money paid out by them for loss of or damage to such freight while in the possession of the terminal companies. The terminal companies have authority to issue bills of lading of the railroads for westbound freight and are responsible for all claims, injury, or damages arising from their improper issuance. They are responsible for and pay to the railroads all freight charges on eastbound freight handled through their terminals and all freight charges payable in advance on westbound freight. The situation to-day is practically the same as it was, and had been for years, when complainant began operations at Yonkers.

The Brooklyn Eastern District terminal extends from North Fifth street to North Tenth street, in Brooklyn, covering 8 or 10 squares. It is owned by the partnership of Havemeyer & Elder. About half a mile from this terminal is the refinery of the American Sugar Refining Company, whose shipments over defendants' lines are handled through that terminal. The American Sugar Refining Company is a corporation and has no interest in the terminal. Members of the partnership of Havemeyer & Elder own 136 shares of the common and 81 shares of the preferred stock of the sugar company, whose total capital stock exceeds \$50,000,000. Prior to 1890 Havemeyer & Elder owned the refinery adjoining the terminal which is now the property of the American Sugar Refining Company.

The Jay Street terminal in Brooklyn is located at the foot of Bridge street, has a water frontage of 1,200 feet, and is about 600 feet deep. It is owned by a partnership composed of William A. Jamison and John Arbuckle. The Arbuckle Brothers Sugar Refinery, adjoining the Jay Street terminal, is also owned by the same partnership. The total investment in the terminal property was shown to amount to approximately \$1,200,000. It was testified that the net earnings from the operation of the terminal for 1907 was \$35,566.84, or about 3 per cent on the investment, without making any allowance for interest or depreciation, and there is nothing in the record to indicate that the fact is otherwise.

Complainant's refinery at Yonkers is about 10 miles north of the present lighterage limits on the New York side of the Hudson. From the refinery to the rail terminals of defendants the distances are as follows: To the D., L. & W. terminal, about 13½ miles; to the Erie terminal, about 13½ miles; to the Pennsylvania terminal, about 14 miles; to the Central Railroad of New Jersey terminal, about 16 miles; and to the B. & O. terminal at St. George, Staten Island, about 20 miles. It appears that these distances are but a trifle more than the distances from Jerome Avenue Bridge, one of the extreme points in the free lighterage district on the East River, to the same terminals; but the distances to these Jersey terminals, respectively, from the Jay street and Brooklyn east district terminals are quite small in comparison with the distances from Yonkers.

It will thus be seen that upon shipments to points on defendants' lines lightered from Yonkers complainant is at a disadvantage of 3 cents per 100 pounds, the cost of such lighterage, in comparison with the sugar refineries within the New York lighterage limits. Complainant asserts that this disadvantage results from unlawful discrimination by defendants in refusing to send their lighters to Yonkers to collect its shipments, or to make complainant an allowance out of the rate equal to the cost of lighterage; and upon the validity of this contention the case must be determined.

It is apparent that if there is any such wrongdoing as complainant alleges it must be caused in one or both of two ways: (1) Either complainant, in common with the city of Yonkers, suffers injury because defendants' refusal to perform lighterage service between Yonkers and Jersey City is an unjust discrimination; or (2) complainant individually is injured because of unlawful advantages accruing to the American Sugar Refining Company and the Arbuckle Brothers Sugar Refinery by reason of the relations existing between those refineries and the defendants through their contracts with the Brooklyn Eastern District and Jay Street terminals.

Upon all the facts disclosed in this proceeding we are constrained to hold that the failure to furnish lighterage service to and from

Yonkers, while according such service to and from Greater New York, does not constitute unlawful discrimination. In fact, it is doubtful whether it comes within the legal meaning of discrimination, unjust or otherwise, unless it follows that the extension by a carrier of its line to a certain community results in unjust discrimination against another community which its line does not reach. It is clear to us that the so-called terminals in New York and Brooklyn, whether owned, leased, or operated under contract, are in fact the terminals of the defendant roads. The defendants by their tariffs agree to receive and deliver freight at those terminals; are responsible to the shipper or consignee for damage to or loss of property up to the time it is delivered at and after it is accepted at those terminals; and by their tariffs and bills of lading agree to carry, not merely to their Jersey City terminals but across the river to the several terminals in New York and Brooklyn.

The necessity of lighterage grew out of the peculiar situation of New York. Defendants could not practically reach that city either by tunneling under or bridging over the river; but the amount of traffic in that community made it highly desirable that they should in some convenient form be able to receive and deliver freight in the city, and therefore they adopted the only available means to that end—the extension of their lines by ferries and lighters. But this extension of their lines to New York was not in compliance with any requirement of the act to regulate commerce. It was merely the exercise by the carriers of business discretion in a matter of physical operation concerning which the Federal Government has not assumed to exercise authority, if any exists. As was said in *Shamberg v. D., L. & W. R. R. Co.*, 4 I. C. C. Rep., 630, 662, referring to the lighterage service of defendants in New York Harbor:

The geographical and physical conditions of the port of New York are such that lighterage or transfer of cars by floats is indispensable. All roads are obliged to do it, more or less, and it is done for all kinds of traffic and for shippers generally. It is simply a necessity of the situation, and doubtless an inconvenience and expense that all would be glad to avoid if possible.

It must not be inferred that the Commission disclaims jurisdiction over defendants' lighterage service. On the contrary, that service must, in our opinion, be conducted in accordance with the requirements and prohibitions of the act. All we hold is that by establishing a lighterage service in New York Harbor defendants incurred no liability, under the act to regulate commerce, to extend that service to Yonkers or other near-by communities, for the obvious reason that defendants have made themselves carriers by their own lines to New York, but have not assumed, and can not be required by this Commission to assume, any such obligation in respect of Yonkers.

The whole argument of complainant on this branch of the case rests upon the proposition that defendants' terminals are on the Jersey side of the Hudson and that the lighterage service by which they reach Greater New York is an accessorial service, so to speak, like cartage, for example, which they can not grant to the sugar refineries in Brooklyn and lawfully withhold from complainant. We are unable to agree with this contention. In our judgment the Brooklyn terminals in question, like others within the lighterage limits of New York Harbor, are the railroad terminals of defendants in that city, none the less so because they are reached by ferries instead of bridges. For these are the places to and from which Brooklyn traffic is taken in the cars in which it is transported, the places where that traffic is received from and delivered to the public, where it is loaded into and unloaded from defendants' cars substantially the same as if those cars were not floated across a river. To and from these places, and serving the public in that capacity, the defendants are common carriers "wholly by railroad" within the meaning of that phrase in the first section of the act. They have not undertaken to provide railroad facilities at Yonkers, a distinct municipality, and their refusal to furnish or engage in transportation to and from that city on the same terms and conditions as apply at Brooklyn is not a violation of the regulating statute.

Even if this lighterage service be regarded as a species of cartage, it would not necessarily follow that it must be extended to Yonkers, because it is provided in Greater New York. That is to say, the peculiarities of New York's situation might justify defendants in affording to shippers in that city a facility of this kind which they would not be bound to furnish elsewhere. But any discussion of this point is unnecessary in view of the conclusion already stated. Holding, as we do, that failure to establish lighterage service to and from Yonkers is not unjust discrimination, we must deny the application for a corrective order predicated upon such alleged discrimination.

Defendants do join with the New York Central in through routes and joint rates from Yonkers to points on their lines, and in general Yonkers takes New York rates and therefore, so far as rates are concerned, is on a parity with New York. If these through routes are unsatisfactory, the apparent remedy is an application to the Commission to establish a satisfactory through route, provided there are carriers whose duty it is to join in forming such a route.

The relationship existing between the American Sugar Refining Company and the Brooklyn Eastern District terminal, by means of stock ownership in the former by members of the firm who own the latter, is apparently so slight as to require no comment, and

that question was virtually waived on the hearing. The relationship existing between the Jay Street terminal and the Arbuckle Brothers Sugar Refinery presents one of those embarrassing situations which inevitably arises when a portion of the service which the carrier is required or undertakes to perform is farmed out to a party who supplies a large percentage of the traffic in respect of which such service is rendered. Such an arrangement naturally excites suspicion and should be subjected to the closest scrutiny. In the present case, as above stated, the partnership of Jamieson & Arbuckle own both the Jay Street terminal and the Arbuckle Brothers Sugar Refinery; and approximately one-third of the traffic passing through that terminal is shipped from or consigned to the sugar refinery. It appears that it is difficult, if not impossible, for defendants to obtain in this section of Brooklyn water front upon which to erect a terminal of their own. Moreover, the Commission has already held that railroads may secure and maintain freight depots by contract with independent concerns, and that such depots thereby become legally and to all intents and purposes the freight depots of the railroads. *Cattle Raisers' Asso. v. C., B. & Q. R. R. Co.*, 11 I. C. C. Rep., 277; *R. R. Com. of Ky. v. L. & N. R. R. Co.*, 10 I. C. C. Rep., 173; *Central Stock Yards Co. v. L. & N. R. R. Co.*, 192 U. S., 568. If, then, the defendants may lawfully contract for the use of the Jay street terminal, the only question remaining is whether the amount paid to this terminal operates in effect as a rebate upon the Arbuckle sugar shipments. The principle involved has been stated in *In the Matter of Allowances*, 12 I. C. C. Rep., 85, as follows:

It is true that under the terms of section 15 of the amended act to regulate commerce a shipper may receive, in the rates charged, a "just and reasonable" allowance from a carrier for any service or instrumentality furnished by him in connection with the transportation of his own property. This provision, however, must be read in connection with the other provisions of the law forbidding and making unlawful any arrangement or practice that results in an undue preference or an unjust discrimination in favor of one shipper as against others, or that results in a rebate or other departure from the lawfully published rates. And therefore if the allowance involves a profit over and above the actual cost of the service rendered it becomes, when made to a shipper, a rebate and an unlawful discrimination to the extent of the profit realized. It is not a rebate when it does not exceed the actual cost. But to avoid that fundamental objection the actual cost of the service rendered must be the limit of the allowance.

Upon the present record it is not shown that any profit accrues to the Jay Street terminal under the payments now made, as stated above, of 3 and 4½ cents per 100 pounds. Indeed, the only inference which can be drawn from the proof submitted is that the Jay Street terminal does not receive a reasonable return upon the investment.

If this be the truth of the matter, as must be assumed on the evidence now before us, we are unable to perceive that the existing relationship between the defendants and this terminal company is illegal or results in any violation of the act. The fifteenth section as amended clearly implies that a just and reasonable allowance may be made to the owner of property transported, when such owner renders a service connected with or furnishes an instrumentality used in the transportation. This provision, for aught we can see, applies to the Arbuckle concern, and nothing has been made to appear which indicates that the allowance to that concern exceeds the authorized measure of compensation.

Moreover, it is evident that the disadvantage of complainant does not arise from the fact that Arbuckle Brothers own and operate the Jay street terminal, but rather and simply from the fact that they are within while complainant is outside of the free lighterage district. If Arbuckle Brothers should transfer that terminal to the defendants, or to an outside party, and cease to have any interest in it whatever, complainant would derive no appreciable benefit. As against complainant Arbuckle Brothers would have the same advantage as at present, under their contract with defendants, if they were to sell their Brooklyn plant to an independent refiner and establish their own business of refining sugar in Jersey City or Philadelphia. The contract in question is of no practical consequence to complainant and its situation would not be improved in any substantial or noticeable degree if that contract were canceled and the Jay street terminal operated by defendants. So far as concerns complainant there is no practical difference in the relations of defendants with Arbuckle Brothers as shippers of sugar and the American Sugar Refining Company as a shipper of the same commodity, although in one case the common ownership of refinery and terminal is complete while in the other case such common ownership is a negligible quantity. This, of course, is upon the assumption that we are correctly informed by the evidence as to the financial results of the operation of the Jay Street terminal under the Arbuckle contract. If the facts are otherwise, as complainant has had full opportunity to ascertain and as might be found upon more complete and accurate disclosure, we would presumably be led to a different conclusion.

Upon the showing now made we are constrained to hold that such discrimination as at present exists in favor of the Arbuckle refinery by reason of the relationship in question is not undue or unlawful. This determination, however, will not preclude the further investigation of this phase of the controversy, either at the instance of this complainant or in an independent proceeding. It follows that the complaint should be dismissed without prejudice, and it will be so ordered.

CLARK, *Commissioner*, concurring:

I agree fully with the views of the majority on the question of extending defendant's lighterage limits so as to include Yonkers. I agree also with the conclusion of the majority report to the effect that defendants should not be required to pay complainant for lightering its sugar to defendants' terminals in the lighterage limits. I base that view, however, upon the fact that complainant's factory is outside the lighterage limits and that, therefore, no obligation rests upon the defendants to either go and get complainant's shipments or hire another to perform that service. In my opinion, if the complainant were located within the lighterage limits the defendants could not lawfully permit complainant's competitors to lighter their sugar and receive pay for that service and refuse to permit complainant to lighter its sugar and receive the same compensation for that service.

It is not enough to say that because the Jay Street terminal, as a whole, yields small dividends, Arbuckle as the owner of the Jay street terminal receives no profit from the lightering of Arbuckle's sugar. The whole plant might be run at a loss and still there might be an abnormal profit in the lightering of sugar. It is all a question of fact and of bookkeeping.

I think therefore unjust discrimination would necessarily exist if defendants permitted one sugar shipper within the lighterage limits to lighter his sugar and receive pay for that service and refused the same privilege and compensation to another sugar shipper also located within the lighterage limits. It might be that one such shipper would make a profit out of such allowance and that another shipper would not, just as one may make more profit than the other from the manufacture of the sugar. That, however, is a question of business ability, management, or advantage which neither the carriers nor this Commission has any right to undertake to adjust or equalize.

LANE, *Commissioner*, dissenting:

I can not agree with the order of dismissal which the majority directs to be entered in this case. The principle involved is so important, and I am so certain that such arrangements as the one here under examination are discriminatory and bound finally to be forbidden if fully discussed, that I venture to set out at some length certain grounds of dissent.

The railroads ending at the Jersey shore are under necessity to provide themselves with terminal facilities in New York City and Brooklyn. Not only is it to their advantage to do so but it is to the public interest also. The shippers of New York City and Brooklyn

would, in many cases be compelled to remove their places of business to other points if the transportation facilities afforded them by the lighterage extensions of the rail lines were withdrawn. Apparent as it is, however, that lighterage facilities as extensions of the New Jersey rail ends to Brooklyn are necessary and commercially inevitable, it can not be forgotten that the chief purpose of the act to regulate commerce is the prevention of discrimination, and that no arrangements whatever to secure such extensions can be lawfully allowed to work discrimination between shippers.

In this particular matter of the transportation of sugar from Brooklyn to the west, the fact appears that the railway carriers have chosen, as the concerns to furnish the lighterage facilities from Brooklyn to the Jersey shore, concerns which are either directly engaged in the refining and shipping of sugar, or which are so closely identified with the business of refining and shipping sugar that the routing of an immense tonnage is subject to their disposition. Having so chosen such persons to furnish lighterage facilities, the railways should be required to do whatever may be necessary to remove any resulting discrimination against other shippers of sugar.

By the arrangements here under consideration the firm of Arbuckle Brothers, a shipper of sugar from Brooklyn, upon delivery of freight from its boats to the rail ends on the Jersey shore receives an allowance of 60 cents per ton upon shipments to Pittsburg or east thereof, and an allowance of 85 cents per ton on shipments to points west of Pittsburg.

The American Sugar Refinery has a more complex form of organization, its power as a shipper being used to further the fortunes of an independent corporation owning the floats and lighters on which its sugar reaches the Jersey shore. The Commission does not know what the ownership relation is between the American Sugar Refinery and the Brooklyn Eastern District terminal, the lighterage concern patronized by it. It does know that the refinery has in the past and does now use its power as a shipper to add to the earnings of the terminal company.

The first lighterage contract involving the use of the property now known as the Brooklyn Eastern District terminal was made on September 1, 1881. The parties to the contract were Lowell M. Palmer, personal representative of H. O. Havemeyer, and the New York, Lake Erie & Western Railroad Company. Mr. Palmer was traffic manager of the Havemeyer & Elder Sugar Refinery, now incorporated in the American Sugar Refining Company. He was also the manager of the docks known as Palmer's docks, now used as the Brooklyn Eastern District terminal and enjoying one of these lighterage arrangements. Mr. Havemeyer was the owner of the Havemeyer & Elder Sugar Refinery and also of these docks. The con-

tract by which Palmer became the lighterman of the New York, Lake Erie & Western Railroad Company contained as one of its stipulations:

The party of the first part (Lowell M. Palmer) agrees that during the continuation of this contract he will give to the second party the exclusive transportation on its line of railroad and connections, all the east and west bound freights destined to points upon the railroad of the second party, or which can be reached by the railroad of the second party and its connections which he can influence or control.

The compensation under this contract was the sum of 4½ cents for each 100 pounds of freight transferred in either direction by the lighterman.

It needs but slight experience with the rebating contracts into which the carriers were forced by large shippers prior to effective supervision under the act to regulate commerce to enable one to recognize the above as a sale of tonnage by which one shipper of sugar was placed at an advantage over all other shippers not enjoying like or equal privileges.

The Commission also knows that the relationship between the American Sugar Refining Company and the Brooklyn Eastern District terminal is still potent to add to the earnings of the latter.

In the investigation of this Commission *In the Matter of Allowances for Transfer of Sugar*, 14 I. C. C. Rep., 619, it was testified by the freight traffic manager of the Pennsylvania Railroad that it made the allowance to the Brooklyn Eastern District terminal because the people who controlled that terminal also controlled the routing of the sugar of the American Sugar Refining Company. I quote from the record in that case:

Q. You have a terminal of your own near-by the Brooklyn Eastern terminal, I believe?

A. Yes, sir.

Q. Then why do you handle sugar from the Eastern District terminal?

A. That is rather a difficult question to answer.

Q. Is it in order to handle sugar?

A. Yes, sir.

Q. In order to get the sugar to handle?

A. Yes, sir.

Q. And if you did not handle through the Brooklyn Eastern District terminal, it is your theory that you would not get it to handle?

A. No; I do not think we would.

Q. That is because the Brooklyn Eastern District terminal people, the people who control that terminal, also control the routing of the sugar, is it not?

A. Yes, sir.

Q. And you have the routing through their terminal and make the lighterage payments to them in order to get the tonnage?

A. That is my understanding.

So far as Arbuckle Brothers are concerned no question can exist of the relationship of the lightermen and the sugar shipper for the reason
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son that one partnership alone is involved, and this case might well turn upon the discrimination enjoyed by that firm. The Commission has good reason to believe that the arrangement by which, when they began competition with the Havemeyer interests in the year 1898, Arbuckle Brothers became lightermen for the various railroads, was entered into by the railroads in response to the demand of the new sugar refiners and shippers that they should enjoy equally as favorable relations with the railroads as were enjoyed by their long-established competitors. The arrangement with Arbuckle Brothers, therefore, may be said to have been entered into in order to prevent a discrimination between them and the American Sugar Refinery Company. It follows, however, that these arrangements give them the same advantage over sugar shippers not enjoying such arrangements as were previously possessed by the Havemeyer interests.

It is asserted in the majority report that "section 15 of the act clearly implies that a just and reasonable allowance may be made to the owner of property transported when such owner renders a service connected with or furnishes an instrumentality used in the transportation." So far from fortifying the view of the majority, the reference to that provision in the act rather emphasizes the wrong to the complainant in the present situation. For if the carriers make an arrangement with Arbuckle Brothers that permits them to render a service and furnish an instrumentality by which their sugar is delivered to the defendants at the Jersey City terminals and make an allowance to them therefor, under every principle of equality embodied in the act the defendants must offer the same privilege to the complainant; and if the complainant renders a like service and furnishes a like instrumentality in getting its sugar to the defendants at Jersey City, it is clear that it is entitled to a like allowance. The complainant owns an extensive dock at Yonkers adjoining its refinery, and it hires lighters to move its sugar to Jersey City. It renders precisely the same service and uses precisely the same instrumentalities in connection with its sugar that Arbuckle Brothers use in delivering their sugar at the Jersey City terminals of these defendant carriers. And it needs no argument to demonstrate that when one shipper, upon the delivery of his sugar to the defendants at Jersey City, receives a substantial allowance, while another shipper, upon delivering his sugar at Jersey City, receives no allowance, the result is an unjust preference of the one and an undue discrimination against the other.

In a word, as between two shippers competing in the same line of business, a carrier may not lawfully discriminate under a contract of this nature even when entered into in good faith in order to supply itself with needed facilities. If such an allowance is made

to one shipper for the service rendered and instrumentalities furnished by him in getting his sugar into the hands of the defendants at Jersey City, it is unlawful to withhold a similar allowance from the complainant for doing precisely the same thing with its sugar. The fact that its refinery is outside the lighterage limits is of no significance. The burden of its additional distance is its misfortune. But it is entitled to deliver its sugar into the possession of the defendants at Jersey City upon exactly equal terms with Arbuckle Brothers. If the trunk lines do not see fit to extend their services to Brooklyn with their own equipment but choose to farm out that service to the concerns controlling the immense sugar tonnage to the westward (which it has been testified by Vice-President Caldwell, of the Delaware, Lackawanna & Western Railroad, is 30 per cent of the total tonnage westbound out of Greater New York), then they should be compelled to so adjust the arrangement that no discrimination will be caused by it.

What is here said must not be construed as an indorsement of the system of rate making by allowances, instead of by net rates. It is a condemnation of the still more pernicious system of discriminative rate making by means of allowances so contrived as to be open to only a portion of the shippers.

I am authorized to say that Commissioners Clements and Harlan join in the views herein expressed.

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No. 1231.

GREATER DES MOINES COMMITTEE

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

No. 1289.

SAME

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

Submitted October 27, 1908. Decided June 25, 1909.

Proportional rates on through traffic to Des Moines, Iowa, ordered reduced.

N. T. Guernsey for complainant.

E. B. Peirce for defendants.

Hugh E. White for Commercial Club of Minneapolis and St. Paul
Jobbers & Manufacturers' Association, interveners.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Freight which originates at points east of the Indiana-Illinois state line is carried to Des Moines, Iowa, over the Rock Island road on a combination of rates consisting of a joint proportional rate to the Mississippi River added to an individual proportional made by the Rock Island road from the river to Des Moines. East of the Mississippi River the Rock Island Railway unites with other carriers in making a joint proportional rate and west thereof it makes independent proportionals from the ten groups into which the territory east of the Indiana-Illinois state line is divided by the carriers for rate-making purposes, which groups are clearly set forth in the tariffs.

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The proportionals of the Rock Island applicable on this business are as set forth in the following table:

Group No.	Originating at—	Merchandise, classes.									
		1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
		<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
1	Including New York.....	42	84	27	21½	15½	18	15	13½	11½	8½
2	Including Syracuse.....	40	84	27	20½	15½	17	15	13½	12	10
3	Including Pittsburg.....	45½	35½	30	22½	16	19	16	14½	11½	8½
4	Including Dayton.....	47½	38½	31	24	16	19	17	15½	13	10
5	Including Saginaw.....	40	33½	26½	20	14½	17	14	12	8½	5½
6	Including Detroit.....	42	36½	29½	23	17	19	16½	15	11½	8½
7	Including Grand Rapids.....	42	36½	29½	21½	16½	19	16½	14	10½	7½
8	Including Logansport.....	45½	37½	32	24	16	19	17	15	11½	8½
9	Including Fort Wayne.....	42	33½	29½	22	16	18½	15½	14	11	8
10	Including Cincinnati.....	47	39½	34½	26	17	20	18½	16½	13	10

In case No. 1289 the combination through rates thus constructed from New York and all points on the lines of the defendants east of the Indiana-Illinois state line to Des Moines are attacked as unjust, unreasonable, excessive, and unlawful, and the Commission is petitioned to establish just and reasonable joint through rates from such points to Des Moines.

No. 1231 attacks the reasonableness of the proportionals fixed by the Rock Island Railway from Rock Island, Ill., to Des Moines. These two cases were heard as one by stipulation.

The Commission, after a full and exhaustive inquiry, has arrived at the following conclusions:

(1) That the combination through rates complained of are excessive, unreasonable, and unlawful.

(2) That such combination through rates are excessive, unreasonable, and unlawful by reason of the excessive, unreasonable, and unlawful proportionals applied by the Rock Island Railway on through traffic from Rock Island, Ill., to Des Moines, Iowa.

(3) That the Chicago, Rock Island & Pacific Railway Company shall be ordered to put into effect on or before September 1, 1909, proportional rates from Rock Island, Ill., to Des Moines, Iowa, applicable on through traffic originating east of the Indiana-Illinois state line which shall not exceed the amounts set forth in the following table:

Group No.	Originating at—	Merchandise classes.									
		1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
		<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
1	Including New York.....	37	30	23½	19	13½	16	13	12	10	7½
2	Including Syracuse.....	35	30	23½	18	13½	15	13	12	10½	9
3	Including Pittsburg.....	40	31	26	20	13	16½	14	12½	10	7½
4	Including Dayton.....	41½	33½	27	21	13	16½	15	13½	11½	9
5	Including Saginaw.....	35	29	23	17½	12½	15	12	10½	7½	4½
6	Including Detroit.....	37	32	26	20	15	16½	14½	13	10	7½
7	Including Grand Rapids.....	37	32	26	19	14½	16½	14½	12	9	6½
8	Including Logansport.....	40	33	28	21	14	16½	15	13	10	7½
9	Including Fort Wayne.....	37	29	26	19	14	16	13½	12	9½	7
10	Including Cincinnati.....	41	34½	30	23	14½	17½	16	14½	11½	9

(4) Application for joint through rates is denied.

No. 1286.

BENTLEY & OLMSTED COMPANY ET AL.

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COM-
PANY ET AL.

Submitted October 27, 1908. Decided June 25, 1909.

The Commission declines to put in carload rates on boots and shoes between Boston and Des Moines, because those articles generally move in less-than-carload quantities and there is no evidence in the record warranting the introduction of a new unit of transportation as to those commodities.

E. G. Wylie and *N. T. Guernsey* for complainants.

E. B. Pierce for Chicago, Rock Island & Pacific Railway Company.

Hugh E. White for Commercial Club of Minneapolis and St. Paul Jobbers' & Manufacturers' Association, interveners.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complaint in this case is that there are no through routes and joint rates on boots and shoes between Boston and Des Moines; also that there are no carload rates on these commodities.

The rates between Boston and Des Moines are made by combination on Rock Island, but following *Greater Des Moines Committee v. C., R. I. & P. Ry. Co.*, 17 I. C. C. Rep., 54, we must decline at this time to establish joint rates.

At present the Official and Western Classifications do not provide carload rates on this commodity. While the Commission has recognized and sustained carload rates in many cases, yet the question of the unit of transportation is one that has long been controlled by the carriers. On many articles what is termed an "any-quantity rate" is the only one published. So long as the carriers publish a reasonable any-quantity rate, the mere fact that they publish a lower rate in carloads on other commodities does not justify the Commission in ordering a carload rate upon the article in question. In this case it appears that boots and shoes move generally in less than carloads, and there is no evidence in the record which warrants the introduction between Boston and Des Moines of a new unit of transportation as to these commodities.

For the reasons above set forth the case will be dismissed.

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No. 1285.

GREATER DES MOINES COMMITTEE

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Submitted October 27, 1908. Decided June 25, 1909.

Complaint alleges that defendant's local rates for the transportation of freight between Chicago and Des Moines are unreasonable and give undue advantage to Minneapolis and St. Paul as against Des Moines; *Held*, That no unreasonable preference or advantage in favor of Minneapolis and St. Paul has been established, but that the present first class rate from Chicago to Des Moines is unreasonable.

E. G. Wylie and *N. T. Guernsey* for complainant.

E. B. Peirce for defendant.

Hugh E. White for Commercial Club of Minneapolis and St. Paul Jobbers' & Manufacturers' Association, interveners.

REPORT OF THE COMMISSIONER.

LANE, *Commissioner*:

In this case the complaint is that the local rates of the Chicago, Rock Island & Pacific Railway for the transportation of freight between Chicago and Des Moines are unreasonable, and that they give undue and unreasonable preference and advantage to Minneapolis and St. Paul as against Des Moines. The present class rates between the points named, in cents per 100 pounds, are as follows:

Rates from Chicago to Des Moines:

Class....	1	2	3	4	5	A	B	C	D	E
Rates....	68	50	40	29	23½	28½	23½	19	15½	12½

We hold that no unreasonable preference or advantage in favor of Minneapolis and St. Paul has been established. We can not find these rates as a whole to be in themselves unreasonable. The second and third class rates are the same as those from Chicago to St. Paul on the same classes of traffic, and the Class E rate is lower than that to St. Paul. The first class rate is excessive by the amount of 8 cents, and we shall make no further order than for the reduction of this rate to 60 cents. An order will be entered accordingly.

Nos. 698 and 707 (Sub-No. 52).

ROBERT H. JENKS LUMBER COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.; AND 184 OTHER CASES DISPOSED OF IN THE ORDER ENTERED HEREIN, WHEREIN PARTIES ARE SPECIFICALLY NAMED, WHICH CASES ARE INDICATED BY DOCKET SUBNUMBERS AS FOLLOWS: 57, 59, 60, 61, 63, 69, 72, 73, 76, 77, 80, 81, 82, 88, 96, 103, 104, 106, 123, 124, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 192, 193, 207, 216, 217, 219, 220, 221, 224, 225, 226, 227, 228, 229, 232, 234, 235, 237, 239, 241, 243, 261, 262, 266, 268, 269, 270, 271, 272, 273, 297, 372, 385, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 434, 435, 436, 438, 439, 440, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 485, 486, 487, 488, 489, 490, 491, 492, 497, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, AND REGULAR FORMAL DOCKET NUMBERS 1256, 1257 (CONSOLIDATED WITH AND INCLUDING SUBNUMBERS 78, 79, 83, 84, 85, 86, 87, 222, AND 295), 1339, 1386, AND 1469.

Submitted June 15, 1909. Decided June 29, 1909.

Upon submission by the parties in 185 supplemental complaints of like character involving claims for reparation for unreasonable rates on lumber on the basis of decisions of the Commission in the original proceedings (Nos. 698 and 707), of a written agreement providing for compromise and settlement of these claims, it appearing that the same contains no provisions inconsistent with law, it is approved as a basis for final settlement and satisfaction thereof, in so far as it relates to matters within the Commission's jurisdiction.

Marcellus Green; William O. Vertrees; Goulder, Holding & Masten; Frank S. Bright; H. K. White; C. S. Hillyer; Samuel A. Putman; Akerman & Akerman; Stanton C. Peelle; George A. Sorrell; James P. Mitchell; R. V. Squires; Sheriff, Dent, Dobyns & Freeman; McGowan, Serven & Mohun; Dwight Hinckley; F. C. Brewer; Victor H. Wallace; G. Gale Gilbert; and W. S. Phippen for complainants.

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Ed. Baxter, R. Walton Moore, Sidney F. Andrews, M. P. Callaway, Albert S. Brandeis, and Claudian B. Northrop for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These cases (185 in number) are all claims for reparation on account of shipments of lumber and grow out of and are based upon reports of the Commission in cases Nos. 698, *Tift v. Southern Ry. Co.*, 10 I. C. C. Rep., 548, and 707, *Central Yellow Pine Asso. v. I. C. R. R. Co.*, 10 I. C. C. Rep., 505, decided by the Commission February 7, 1905. They have been treated, therefore, as supplemental proceedings to those in the two original cases just above referred to. In the order made herein the parties will be severally and definitely named with reference to the numbers of their cases above indicated.

The cause of complaint in all of these supplemental proceedings is the same as that in the 113 cases disposed of in our report in Nos. 698 and 707 (Sub-No. 2), *Joice & Co. v. I. C. R. R. Co.*, 15 I. C. C. Rep., 239. The proceedings before the Commission, the reports and orders made by it, and the proceedings in court, as well as the decrees thereof, relating to and affecting the cases now under consideration are set forth and referred to in our report last above mentioned, and therefore need not be here repeated.

These cases having been assigned for hearing before the Commission on March 18, 1909, all of the parties thereto requested postponement of the same upon assurances by them to the Commission that they had come to an understanding among themselves as to the basis of an adjustment, which they desired to put in writing and submit to the Commission for its approval. They have now presented a written agreement, duly signed by the parties and their counsel in these cases, asking approval thereof. The Commission having examined this agreement, and it appearing to our satisfaction that none of the provisions or terms thereof, in so far as the same relate to matters within the Commission's jurisdiction, are inconsistent with any provision of law, the same is approved. The defendants are hereby authorized to pay to complainants from time to time the amounts found to be due upon their respective claims in these cases on the basis and terms set forth in the said agreement, and they are required to make report to the Commission on October 1, 1909, and on the first day of each succeeding month, of such payments as they make from time to time in pursuance of said agreement, showing separately the amount and date of each payment, to whom and by what carriers paid.

These cases will be retained until we are duly advised of the adjustments and payments to be made under the agreement referred to, whereupon they will be dismissed as having been settled.

No. 978.
E. SONDHEIMER COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted July 18, 1908. Decided June 29, 1909.

Defendants' tariff in force when complaint was filed permitted dealers to ship lumber into Memphis from southern and western territory, there unload, assort, grade, and dry it, and within ninety days from the date of arrival, upon presentation of paid expense bills covering movement into Memphis, to ship out the same lumber, or an equal tonnage of the same kind of lumber, to certain northern and eastern territory upon rates which, combined with the rates into Memphis, were less than the combination of rates upon Memphis, but not less than the through rate from the original shipping points to final destinations. The maximum "shrinkage" of rates so permitted was 4 cents per 100 pounds. No such privilege was permitted at Cairo, and the rates exacted upon lumber handled through that point were the full locals in and out. Since complaint was filed the tariff in question has been superseded by a tariff which is admitted by complainant to have removed the alleged discrimination in rates; *Held*, That owing to dissimilarity in circumstances and conditions surrounding the movement of lumber through Memphis and Cairo, the yarding and reshipping privilege at Memphis, if proper rates are applied thereunder, is not an undue discrimination against Cairo; but that the rates in force through Memphis when complaint was filed, from competitive producing points in Mississippi to competitive consuming points in the territory involved, were unduly discriminatory against Cairo. Complainant given leave to make proof of any damage it may have suffered.

Marsilliot & Murray for complainant.

Charles N. Burch for defendants.

Brown & Anderson for Memphis Lumbermens' Club, intervener.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

It is alleged in this complaint that certain reconsigning or reshipping privileges were granted by defendants to shippers of lumber from Memphis, Tenn., which were not granted to complainant or other shippers from Cairo, Ill.; that by reason thereof defendants

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charged complainant unjust and unreasonable rates for the transportation of lumber from points in the state of Mississippi on defendants' lines to points north and east of Cairo; and that complainant, other shippers, and the city of Cairo were subjected to undue discrimination and unreasonable prejudice and disadvantage.

The Memphis Lumbermens' Club, an association of lumber dealers and shippers at Memphis, intervened on behalf of defendants.

Defendants submitted a motion to dismiss the complaint because other railroads leading from Memphis were not made parties, although they had tariffs containing the same provisions with respect of re-consigning lumber from Memphis as the tariff of the Illinois Central. This motion is denied. Whilst the other carriers are proper, we are of opinion that they are not necessary parties to this proceeding. The question here presented is one of alleged undue discrimination resulting from rates under the tariff of defendants on shipments from Memphis as compared with rates from Cairo to the same points of destination.

At the hearing no evidence was submitted as to the number, weight, and route of shipments, with a view to ascertaining the amount of reparation, for the reason that complainant was advised that the Commission would first determine whether the tariff was unduly discriminatory, and, if so found, that complainant would have further opportunity to furnish proof as to the extent of its damages.

Complainant is an Illinois corporation engaged in the business of buying, selling, and shipping lumber to and from Cairo. The executive offices of this company are located at Memphis, but its distributing yards are in Cairo. By agreements with the various owners it controls the output or product of about 22 sawmills in the states of Mississippi, Arkansas, and Louisiana. Nine of these mills are located in Mississippi south of Memphis.

Memphis is the largest wholesale hard-wood market in the United States. About 31 wholesale dealers have distributing yards there and 15 saw and planing mills are in operation. The supply of lumber is obtained from various points in near-by States, a large proportion of the hard-wood lumber being produced in Mississippi. Memphis has a population of about 100,000 and is located on the Mississippi River near the south line of the State of Tennessee, and is reached by 9 railroads. Cairo is 162 miles north of Memphis, has a population of about 12,000, and is located near the junction of the Ohio and Mississippi rivers. It is reached by 5 railroads.

The main line of the Illinois Central extends from Chicago, Ill., to New Orleans, La., with branches to Memphis, Louisville, Ky., Indianapolis, Ind., and various other points. A line of the system extends

from Chicago to Omaha, Nebr. The Yazoo & Mississippi Valley road, which is a part of the Illinois Central system, extends from Memphis to New Orleans.

The reconsigning or reshipping privilege applicable to shipments of lumber from Memphis on the date the complaint was filed appears in Illinois Central tariff, I. C. C. No. 1475. Under the provisions of this tariff dealers were permitted to ship lumber into Memphis from southern and western territory and there unload, yard, assort, grade, and dry it. Within ninety days from the date of arrival, upon presentation of paid expense bills showing movement into Memphis, the dealer was permitted to ship out the same lumber, or an equal tonnage of the same kind of lumber, to certain northern and eastern territory. The rate into Memphis was the full local rate from point of origin, and the rate out of Memphis to points north of the Ohio River and east of cities on the west bank of the Mississippi River was the full local rate, according to tariffs which were in effect April 1, 1897, less certain maximum shrinkages. It was provided that the shrunk rate out of Memphis plus the inbound rate must not be less in any case than the through rate from point of origin to final destination.

The territories to which the reconsigning rates applied, together with the shrinkages allowed, were as follows: (1) To points in the State of Illinois, Wisconsin, and points in Minnesota east of the Mississippi River, including cities on the west bank of the Mississippi River, there was a maximum shrinkage of 4 cents from the local rate from Memphis. (2) To points in Central Freight Association territory, which is defined in the tariff as the territory between the Indiana-Illinois state line on the west and a line run (approximately) through Buffalo, and Pittsburg, Pa., on the east, there was a maximum shrinkage of 3 cents. (3) To Joint Traffic Association territory, which, generally speaking, is that part of the United States east of a line drawn through Pittsburg and Buffalo, there was a maximum shrinkage of 2 cents.

The record contains considerable testimony with respect of possible manipulations of expense bills by Memphis dealers, and the opportunity for one shipper at that point to secure an advantage over another. That this was possible under the tariff appears on its face. There were different local rates into Memphis, and as the identity of the lumber was not required to be preserved, shippers no doubt used expense bills to secure the lowest through rates, though the evidence fails to show any specific instance of manipulation. Evidence of shifting of expense bills, etc., is not deemed of special importance, for the reason that in argument counsel for complainant

stated that reliance was not placed upon manipulations of expense bills at Memphis, under the tariffs that were in existence, to establish its claim of excessive rates or undue discrimination, but upon the tariff rates charged to Memphis dealers upon shipments from points of origin to points of destination via Memphis, as compared with rates charged complainant on shipments of lumber from and to the same points via Cairo. Thus the real question presented for determination is whether Cairo was unduly discriminated against by rates on lumber from Memphis to points in Official Classification territory, including cities on the west bank of the Mississippi River and points in the states of Minnesota and Wisconsin east of the river.

While the case was pending the attention of the Commission was called to the reconsigning tariff in question. It, together with all similar tariffs at Memphis, was condemned as to form, because, amongst other things, it failed to show the rates from points of origin to ultimate destination, and such rates could not be ascertained except by reference to other tariffs, and because under its provisions it was possible to make varying rates between the same points on the same traffic. March 1, 1908, this tariff was withdrawn. Effective September 8, 1908, another tariff was issued by the Illinois Central, a number of roads reaching Memphis being parties thereto, which permitted the reconsignment of lumber under different conditions from those provided in the former tariff.

In the new issue, I. C. C. No. 2, it is provided that the rates on lumber (except pine lumber), staves, and heading from Memphis, when coming from beyond by rail, apply only under certain rules. Among the rules are these: That inbound freight bills shall not be honored after 120 days from date thereof; that before issuing bills of lading the outbound carrier shall obtain from the secretary of the Memphis Freight Committee approval in the following form for acceptance of the inbound freight bill:

This freight bill will be accepted within 120 days of its date — from (here insert name of original consignee), but from no other person, firm, or corporation, as authority for use of rates applying from Memphis on shipments coming from beyond.

The weight of the outbound shipment must not exceed the weight shown on the inbound freight bill. The rates provided under this tariff are called proportional rates. On business from beyond Memphis they are, so far as we are able to ascertain by comparison, 1 cent per 100 pounds less than rates from Memphis proper to all points here involved. It appears that under the tariff complained of different rates were made on gum and cottonwood than on hard-wood lumber from points of origin to certain points of destination. The new issue, it is to be noted, includes all lumber except white pine.

The contention of defendants is that the lumber business is conducted under different circumstances and conditions at Memphis than at Cairo; that there is more competition at Memphis; that it is located nearer the sources of production of the lumber; and that the rate therefrom may be lower than from Cairo without violation of the act. It is also insisted by defendants that the tariff under review and the existing tariff are properly to be designated as tariffs giving "yarding-in-transit privileges," and the position taken is that the circumstances warrant yarding-in-transit at Memphis in order to place shippers at that point on substantial equality with shippers at Cairo and other Ohio River crossings.

Complainant contends that much of the lumber, in fact, all of it that passes from Memphis to the north via the Illinois Central, must pass through Cairo, a shorter distance point on the same line; that the lumber business at Cairo and at competitive points in Mississippi is conducted by complainant under substantially similar circumstances as by dealers in Memphis; and that no reason appears why Memphis should have lower rates from and to competitive points than Cairo.

It is well settled that a carrier must accord to points on its own line which are entitled to similar treatment equal facilities of shipment and relatively equal rates. It is also well settled that dissimilarity of circumstances and conditions may justify a discrimination which is not undue. That is to say, any discrimination which exists must not exceed that which is warranted by the differences in circumstances and conditions. Are transportation and other conditions at Cairo similar to those at Memphis? If not, were the rates charged to Cairo dealers unreasonable or unduly discriminatory? To properly answer these questions requires a review of the history of the reshipping or yarding privilege at Memphis, the reasons for its inauguration and maintenance, its effect upon rates, and an examination of the conditions surrounding the lumber business of both cities.

The record fails to show the date when the reshipping arrangement was first put into effect at Memphis. It does appear that it has prevailed there for more than sixteen years; that it was first applied to shipments from Arkansas points only, and was afterwards gradually extended to other States, including Mississippi. Cairo, because of its location and its rail facilities to Arkansas lumber-producing points, was the short line to northern and eastern destinations, and secured practically all the northeastern Arkansas lumber traffic. Memphis roads, in order to secure a portion of this business, arranged for the reshipping privilege at Memphis. Its purpose was to permit lumber

to be brought into Memphis, yarded and graded, and then reshipped to points north and east in competition with yards, dealers, and shippers at St. Louis and Cairo. In other words, the through rate was to be protected from the original point of shipment to the point of final destination. The Illinois Central began to operate into Memphis from the north in August, 1896. In that year it acquired control of what was formerly known as the Chesapeake, Ohio & Southwestern Railroad, extending from Memphis to Louisville and crossing the main line of the Illinois Central at Fulton, a point near the state line between Kentucky and Tennessee. It found the reshipping arrangement in effect on that road, and on all roads leading north and east from Memphis, and adopted it.

Railroads leading from Memphis reach Cincinnati, Louisville, Evansville, and all Ohio River gateways, and reach St. Louis and Cairo by routes on both sides of the Mississippi River. The Southern Railway extends from Memphis east to tide water at Norfolk, Va. Considerable lumber shipped from Memphis is for export and also for certain southeastern points. No reconsignment privilege is extended to such shipments, however, and they are not involved in this controversy.

Memphis lumbermen own yards in that city which are graded and otherwise fitted for piling and sorting lumber convenient for shipment. The average yard man does not operate machinery for the manufacture of lumber. The tariff in question did not permit the reshipment of lumber, under the privilege, which had been planed, sawed, or otherwise treated by machinery in Memphis. A few of the Memphis yard men own and operate sawmills which are of sufficient capacity to supply their demands, and shipments from these mills are largely made from the mills direct to points of consumption, the portion which is not so shipped being hauled to Memphis. The usual method of operation by yard men is to finance small mills located in Mississippi, eastern Arkansas, and northern Louisiana, of which there is a very large number. These small mills are situated at various points in the territory described and are owned by men of limited capital. None of them produces any considerable quantity of any one kind of lumber, and most of them have a capacity of only about 10,000 to 12,000 feet per day. The owners of these mills require cash as soon as the lumber comes from the saw to enable them to pay their workmen and meet other necessary expenses. They are not in position to stand delays of payment consequent upon yarding and drying lumber at the mill site, assuming that they are able to dispose of the lumber there. It requires skilled men to pile and grade lumber, and the work can not be economically done by small producers. These

mills clear the land as they go, sawing various kinds of lumber, such as oak, ash, poplar, gum, cottonwood, etc., which are often found growing upon the same tract of land. The trees sawed are of varying sizes, and therefore the lumber is of different dimensions. Each of the varieties is produced in comparatively small quantities, in no way adequate to the demands of purchasers, who usually require certain kinds of lumber in large lots.

Because of these conditions and others that might be mentioned, from 80 to 90 per cent of the lumber produced at the points in question is shipped to Memphis as it comes from the saw. Exigencies of the business make necessary a concentrating point convenient to the mills, where the lumber may be graded, piled, and dried. Memphis is centrally located, and is near the producing territory, the evidence showing that the average distance from Mississippi points is about 100 miles. Memphis, therefore, in a perfectly natural manner became the point for concentrating lumber from nearby producing territory. Its proximity thereto and its facilities of shipment dictated its selection by mill owners, yard men, lumber dealers, buyers, and carriers.

Memphis is reached by 9 railroads and competition for lumber traffic has been keen. It is earnestly argued, however, in behalf of complainant that a note to the reconsigning tariff of the Illinois Central had the effect of nullifying competition on shipments of lumber from points on defendants' lines to all points north and east. This note, which appears to have been in effect for about ten years prior to filing the complaint, but is not now printed in the tariffs, was as follows:

The rates shown herein on lumber and articles taking the same rate, apply only on shipments to Memphis, Tenn., proper, or when reshipped via the Illinois Central Railroad or the Yazoo & Mississippi Valley Railroad. On shipments that are not for Memphis, Tenn., proper, or to be reshipped by the Illinois Central Railroad or the Yazoo & Mississippi Valley Railroad, the rate to Memphis, Tenn., will be 3 cents per 100 pounds higher than rates shown.

When bills of lading are issued by forwarding agent, showing Memphis, Tenn., as the destination of the lumber, he will insert therein a rate 3 cents per 100 pounds higher than shown herein, but will waybill shipment at tariff rate, subject to correction by agent at Memphis, Tenn., in accordance with above, which correction will be accepted by forwarding agent.

The purpose of this provision is explained by the general freight agent of the Illinois Central, as follows:

We found at one time that certain of the lines out of Memphis, not many of them, but some of them, were going down to their local stations and having lumber fictitiously billed into Memphis and then, when delivered to them, reconsigning it in the original cars without unloading it to other points, say, for example, Louisville, or Cleveland, or Chicago, or points which we reached ourselves; in other words, they

were scalping our territory, as we describe it, in order to get business for themselves and take it away from us, and we put this provision here in the tariff to make it as expensive for them as we could.

The evidence shows that lumber was shipped into Memphis over defendants' lines and reshipped to northern points at the through rate over other lines. There is no convincing evidence that application of the note was ever made to shipments of lumber to Memphis proper and unloaded there. Indeed, we are unable to find that the note ever had any effect upon the general reshipping privilege granted at Memphis.

It is further argued by complainant that defendants recognized that the reshipping privilege at Memphis resulted in unjust rates, because the evidence shows that, prior to April, 1901, the Illinois Central allowed and paid complainant claims to the amount of 2 cents per 100 pounds on lumber shipped to Cairo over its lines and shipped out over its lines to certain northern destinations. The evidence with respect of this allowance is vague and uncertain. It does not clearly appear that the allowance was made to all shippers from Cairo. None of the tariffs on file shows any such allowance. Inasmuch as it does not appear that it was an allowance by Cairo roads as a reconsigning privilege applicable to all shipments from Cairo, the payment of these allowances has no special significance in the existing controversy.

So far as the record shows, the lumber business has not been conducted at Cairo under the same methods which prevail at Memphis. Substantially all lumber is shipped to Memphis by rail, while about 50 per cent of the lumber received at Cairo comes by barge from points on the Mississippi River south of Memphis. Only about 25 per cent of the lumber received by complainant from Mississippi points is green. All dealers in Cairo receive a much larger per cent of dry lumber than is hauled to Memphis. This arises undoubtedly from its location. Cairo has ample facilities for handling lumber by river transportation, while Memphis has practically no such facilities, and little or no lumber is received there by water. Cairo draws considerable of its supply from near-by Missouri and Arkansas points. Five railroads reach Cairo, three of which also reach Memphis. None of these has its own line to points east of the Indiana-Ohio state line, north of the Ohio.

The combined volume of business done at Cairo and Joppa, Ill. (the latter point being near by and for all practical purposes in the same situation as Cairo), does not exceed 50 per cent of that done at Memphis. Cairo is 162 miles farther from the points of origin involved and is not a natural or practicable point for the concentration and shipment of the product of the mills of that district.

When railroads in the territory in question were first constructed from northern points south, the southern termini of the northern lines were at points on the Ohio River, while the northern termini of the southern lines were likewise at points on that river. For many years the northern lines ended at Cairo and other Ohio River crossings, and the southern lines ended on the south bank of the river opposite Cairo and other points. Later, these roads were connected by bridges across the river. The rates as originally constructed from points in southern territory to points in northern territory were the sum of the rates to Cairo plus the rates from Cairo to final destination. In other words, the through rate was the combination of the rates to and from Cairo. Competitive conditions at the crossings had the effect of making these rates reasonably low. Cairo, as well as the other Ohio River crossings, became a basing point. This method of rate construction has, generally speaking, remained in force to the present time. The making of the through rate on the Cairo combination does not prevail in all cases north to the same extent as formerly, but it does obtain to many points involved.

Under these circumstances we find that conditions are not similar at Cairo and Memphis. Competition is keener at the latter point and the circumstances under which the lumber business must be conducted there justify a yarding privilege at that point. We further find that the reshipping privilege, if proper rates are applied thereunder, is not an undue discrimination against Cairo or shippers of lumber therefrom.

This brings us to consider whether the rates charged Cairo dealers under the tariff complained of were unduly discriminatory. It is to be remembered that the rates in question are the through rates under the reshipping privilege at Memphis, compared with rates via Cairo made on the combination of rates into and out of that point. No question of the reasonableness of any of the rates *per se* is involved, and no evidence was submitted with respect thereto.

More than 28,000 rates are involved in this controversy. It is impossible to make comparisons of all the rates via both places to all points of destination. The following tables give the Cairo and Memphis combination rates, the through rates, and rates under the new and under the canceled tariffs via Memphis and Cairo, respectively, from producing points to certain points selected with a view of illustrating the situation with respect of shipments from both points to the territory in question.

Statement showing rates, in cents per 100 pounds, on hard-wood lumber, from and to points named.

From—	To St. Louis, Mo.					To Moline, Ill.					To Milwaukee, Wis.				
	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.
Clarksdale, Miss.....	20	18½	15	15	17½	23	22½	21	21	22½	26	26½	24	24	25½
Duncan, Miss.....	20	18½	15	15	18½	23	23	21	21	23½	26	27½	24	24	26½
Darling, Miss.....	20	18½	15	15	17½	23	23	20	20	20	26	26½	24	24	25½
Greenville, Miss.....	20	20½	16½	15	19½	23	24½	21½	21	24½	26	28½	24½	24	27½
Booths, Miss.....	20	21½	17½	15	20½	23	25	22½	21	25½	26	29½	25½	24	28½
Glen Allen, Miss.....	20	21½	17½	15	20½	23	25½	22½	21	25½	26	29½	25½	24	28½
Isola, Miss.....	20	20½	16½	15	19½	23	24½	21½	21	24½	26	28½	24½	24	27½
Moorhead, Miss.....	20	20	16	15	20	23	25	21	21	25	26	28	24	24	28
Cleveland, Miss.....	20	19½	15½	15	18½	23	23½	21	21	23½	26	27½	24	24	26½
Gwin, Miss.....	20	20½	17	17	19½	23	24	22	22	24½	26	28½	26	26	27½
Redwood, Miss.....	20	22½	18	15	21	23	26	23	21	26	26	30	26	24	29
Lorman, Miss.....	20	23	19	17	22	23	27	24	22	27	26	31	27	26	30
Gloster, Miss.....	20	24½	20½	17	23½	23	28½	25½	22	28½	26	32½	28½	26	31½
Sardis, Miss.....	19	18	15	15	17	22	22	19	19	22	25	26	23	23	25
Michigan City, Miss.....	19	20	16	15	19	22	24	21	21	24	25	28	25	25	27
Water Valley, Miss.....	19	21	17	16	20	22	25	22	21	25	25	29	25	25	28
Starksville, Miss.....	20	22	18	16	21	23	26	23	22	26	26	30	26	25	29

From—	To Racine, Wis.					To Oshkosh, Wis.					To Indianapolis, Ind.				
	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.
Clarksdale, Miss.....	26	26½	24	24	25½	30	30½	29½	29½	29½	23	23½	21	21	22½
Duncan, Miss.....	26	27½	24	24	26½	30	31½	29½	29½	29½	23	24½	21½	21	23½
Darling, Miss.....	26	26½	24	24	25½	30	30½	28	28	29½	23	23½	21	21	22½
Greenville, Miss.....	26	28½	24½	24	27½	30	32½	29½	29½	31½	23	25½	22½	21	24½
Booths, Miss.....	26	29½	25½	24	28½	30	33½	29½	29½	32½	23	26½	23½	21	25½
Glen Allen, Miss.....	26	29½	25½	24	28½	30	33½	29½	29½	32½	23	26½	23½	21	25½
Isola, Miss.....	26	28½	24½	24	27½	30	32½	29½	29½	31½	23	25½	22½	21	24½
Moorhead, Miss.....	26	28	24	24	28	30	32	29½	29½	32	23	25	22	21	26
Cleveland, Miss.....	26	27½	24	24	26½	30	31½	29½	29½	30½	23	24½	21½	21	23½
Gwin, Miss.....	26	28½	26	26	27½	30	32½	30	30	34	23	25½	22	21	24½
Redwood, Miss.....	26	30	26	24	29	30	34	30	29½	33	23	27	24	21	26
Lorman, Miss.....	26	31	27	26	30	30	35	31	30	34	23	28	25	23	27
Gloster, Miss.....	26	32½	28½	26	31½	30	36½	32½	30	35½	23	29½	26½	23	28½
Sardis, Miss.....	25	26	23	23	25	29	30	27	27	29	22	23	20	20	22
Michigan City, Miss.....	25	28	25	25	27	29	32	29	29	31	22	25	22	22	24
Water Valley, Miss.....	25	29	25	25	28	29	33	29	29	32	22	26	23	22	25
Starksville, Miss.....	26	30	26	25	29	30	34	30	30	33	23	27	24	23	26

Statement showing rates, in cents per 100 pounds, on hard-wood lumber from and to points named.

From—	To New York, N. Y.					To Buffalo, N. Y.					To Detroit, Mich.				
	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.
Clarksdale, Miss.	40	37	35	34	36	31	29	27	27	28	27	27	26	26	26
Duncan, Miss.	40	38	35	34	37	31	29	27	27	28	27	27	26	26	27
Darling, Miss.	40	37	35	34	36	31	29	27	27	28	27	27	25	25	26
Greenville, Miss.	40	39	37	34	38	31	31	29	27	28	30	29	26	26	26
Booths, Miss.	40	40	38	34	39	31	32	29	28	30	27	27	26	26	26
Glen Allen, Miss.	40	39	37	34	38	31	31	29	27	28	27	27	26	26	26
Isola, Miss.	40	39	37	34	38	31	31	29	27	28	27	27	26	26	26
Morehead, Miss.	40	38	36	34	38	31	30	28	27	28	27	27	26	26	26
Cleveland, Miss.	40	38	36	34	37	31	30	28	27	28	27	27	26	26	27
Gwin, Miss.	40	38	36	34	38	31	31	29	28	30	27	27	26	26	26
Redwood, Miss.	40	41	39	34	40	31	33	30	28	31	31	31	28	28	28
Lorman, Miss.	40	42	40	35	41	31	33	30	28	31	31	31	28	27	27
Gloster, Miss.	40	43	41	35	42	31	35	33	30	34	27	33	30	27	32
Sardis, Miss.	39	37	35	34	36	30	28	26	25	27	26	27	24	24	26
Michigan City, Miss.	39	39	37	34	38	30	30	28	27	29	26	29	26	26	26
Water Valley, Miss.	39	40	38	34	39	30	31	29	28	30	26	30	27	26	26
Starkville, Miss.	40	41	39	34	40	31	32	30	28	31	27	31	28	27	30

From—	To Chicago, Ill.					To Cleveland, Ohio.				
	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.	Cairo combination.	Memphis combination.	Memphis reconsign.	Through rates.	Memphis, reconsign. under new tariff.
Clarksdale, Miss.	23	23	21	21	23	28	28	28	28	27
Duncan, Miss.	23	23	21	21	23	28	28	28	28	27
Darling, Miss.	23	23	21	21	23	28	28	28	28	27
Greenville, Miss.	23	23	21	21	23	28	28	28	28	27
Booths, Miss.	23	23	21	21	23	28	28	28	28	27
Glen Allen, Miss.	23	23	21	21	23	28	28	28	28	27
Isola, Miss.	23	23	21	21	23	28	28	28	28	27
Morehead, Miss.	23	23	21	21	23	28	28	28	28	27
Cleveland, Miss.	23	23	21	21	23	28	28	28	28	27
Gwin, Miss.	23	23	21	21	23	28	28	28	28	27
Redwood, Miss.	23	23	21	21	23	28	28	28	28	27
Lorman, Miss.	23	23	21	21	23	28	28	28	28	27
Gloster, Miss.	23	23	21	21	23	28	28	28	28	27
Sardis, Miss.	23	23	21	21	23	28	28	28	28	27
Michigan City, Miss.	23	23	21	21	23	28	28	28	28	27
Water Valley, Miss.	23	23	21	21	23	28	28	28	28	27
Starkville, Miss.	23	23	21	21	23	28	28	28	28	27

Examination of the above tables shows that under the tariff complained of Memphis had lower rates in 138 instances and under the new issue has lower rates in 47 instances. So far as we are able to ascertain the new tariff makes changes from and to all points involved in about the same proportion as shown in the tables. It is to be

noted that to some points rates from Memphis were higher under the canceled tariff than from Cairo, and the same is true to a larger extent under the new issue.

Counsel for complainant states that the existing tariff does not discriminate in favor of Memphis against lumber shippers from Cairo. Since it was published no complaint has reached the Commission from any Ohio gateway shipper. So far as is known Memphis shippers are satisfied with the existing rates. If it be true that a uniform proportional rate of 1 cent less than the full combination of locals into and out of Memphis on shipments from beyond represents just and reasonable through rates to all points in the territory involved, then it would seem clear that the shrinkage of 2, 3, and 4 cents per 100 pounds under the provisions of the canceled tariff was unreasonable and unduly discriminatory against Cairo. The Illinois Central while this case was pending published the new yarding-in-transit rates applicable to Memphis. Although they appear to remove the cause of complaint made in this case, the action taken supports the charge of unjust discrimination under the former tariff. Further than this, it appears that the old rates favored Memphis in many instances more than 5 cents per 100 pounds, and that differences in rates ranging from one-fourth of a cent to more than 5 cents prevailed from points of production within short distances from Memphis.

Considering all the circumstances in this case, we find that the rates on shipments of lumber in carloads charged Memphis shippers, under the provisions of the tariff in effect when this complaint was filed, for the transportation of lumber via Memphis from competitive producing points in the State of Mississippi to competitive consuming points in the territory involved, when lower than rates from and to the same points via Cairo were unduly discriminatory against complainant and other Cairo shippers to the extent that they exceeded the rates now in effect between the same points via Memphis and were therefore unlawful.

Reparation, if it may be awarded at all, can not be determined on this record. Complainant upon application will be afforded opportunity to make proof with respect of any damages it may have suffered on shipments from and to competitive points in the territory involved, and the case will be held open for that purpose.

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No. 1934.

W. W. MONTAGUE & COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL., AND 72 OTHER CASES DESIGNATED IN THE
DECISION BY DOCKET NUMBERS.

Submitted May 24, 1909. Decided June 24, 1909.

1. A carload minimum for light and bulky articles like furniture should be such that the minimum can ordinarily be loaded, but the minimum is not necessarily unreasonable because it occasionally happens that cars, although loaded to their full physical capacity, will not contain it.
2. Minimums fixed by transcontinental tariffs on furniture of various kinds considered and those upon wood mantels and brass bedsteads condemned as too high.
3. Reparation awarded with respect to shipments upon wood mantels and brass bedsteads for the reason that the minimum imposed was excessive.

J. O. Bracken and Lester G. Burnett for complainants.

T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard, P. F. Dunne, C. W. Durbrow, and W. F. Herrin for Southern Pacific Company, Union Pacific Railroad Company, and various other defendants.

A. S. Halsted and W. R. Kelly for San Pedro, Los Angeles & Salt Lake Railroad Company, and various other defendants.

O. E. Butterfield and Clyde Brown for New York Central Lines, and various other defendants.

C. B. Northrop for Southern Railway Company.

James H. Campbell for Grand Rapids & Indiana Railway Company and Pennsylvania Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint and 72 others heard at the same time involve the lawfulness of various minimums applied by transcontinental tariffs to the movement of furniture of different kinds and in different forms from eastern points of origin to Pacific coast terminals, mainly San Francisco and Los Angeles. While the various minimums differ, the

general questions presented are the same and may be disposed of in a single report.

Each complaint refers to one or more specific shipments. No. 1934, for example, refers to a movement of wood mantels. The allegation is that the complainant delivered to the Chicago & North Western Railway Company at Chicago a carload of wood mantels which was moved by that company in connection with the Atchison, Topeka & Santa Fe Railway Company from Chicago to San Francisco; that the defendants assessed against said shipment the published rate of \$1.50 per 100 pounds; that the car was loaded to its full visible capacity and that its contents weighed 17,900 pounds; that the minimum applicable to the shipment in question was 20,000 pounds, and that the rate of \$1.50 was assessed upon 20,000 and not upon the actual contents of the car. The claim is that the defendants thereby improperly exacted from the complainant the difference between the amount collected and what would have been collected had the rate been assessed upon the actual contents of the car, in this case \$31.50. The prayer is that the Commission award the complainant reparation in this sum and order the defendants to cease and desist from exacting that minimum for the future.

All the complaints contain an allegation that the rates imposed by the defendants are unjust and unreasonable, but the unreasonableness arises in all cases out of the imposition of an alleged unlawful minimum. No question is made touching the rate itself, provided the minimum be properly adjusted.

The transcontinental tariff names minimums for different kinds of furniture, and in some instances for the same kinds of furniture in different forms. The rates frequently vary with the minimum. Usually the rates are the same from all points of origin east of the Mississippi River, but in some instances a slightly higher rate is made from what is known as "Dalton territory," taking its name from Dalton, Ga., and a still higher rate from Carolina territory, which embraces furniture-producing points in the eastern Carolinas. Below is given the minimum, attacked in these various proceedings, together with the rate:

1. Wood mantels, minimum weight 16,000 pounds, rate \$1.50.
2. Steel bath tubs, minimum weight 10,000 pounds, rate \$2.40.
3. Furniture, new, all kinds, minimum weight 12,000 pounds; rate, \$2.20 per 100 pounds from northern territory, \$2.22 from Dalton territory, \$2.40 from Carolina territory.
4. Bedroom furniture with a released value, minimum weight 16,000 pounds for a car 36 feet in length from southern territory, 20,000 pounds for a car of any length from northern territory; the rate from northern territory, \$1.50 per 100; from Dalton, \$1.60; from Carolina, \$1.70.

The minimum of 16,000 pounds was in effect during the period covered by the shipments involved in these proceedings; at the
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present time that minimum from Carolina territory has been reduced to 14,000 pounds, the rate having been increased to \$1.85 per 100.

5. Iron and brass beds, minimum 30,000 pounds; rate from northern territory, \$1.10; from Dalton, \$1.28; from Carolina, \$1.34.

6. Folding beds, minimum 20,000 pounds; rate \$1.50.

7. Mattresses and springs, minimum weight, northern territory, 20,000 pounds; rate \$1.10 per 100; minimum from Dalton and Carolina territory 30,000 pounds; rate from Dalton, \$1.23; from Carolina, \$1.30.

8. Chairs and chair stock, minimum 20,000 pounds from northern territory; rate \$1.50; minimum 30,000 pounds from Dalton and Carolina territory; rates \$1.65 and \$1.75, respectively.

9. Tables, minimum 24,000 pounds; rate from northern territory, \$1.50; from Dalton, \$1.60; from Carolina, \$1.70.

The first proposition of the complainants is that any minimum which can not be invariably loaded into the car furnished by the carriers with proper care upon the part of the shipper is for that reason unlawful. To put the matter in another way, if the shipper has for shipment a quantity in excess of the minimum specified in the tariff the carrier must provide a car which will contain that minimum, and if the car is loaded to its full physical capacity the carrier has no right to exact a rate per 100 pounds upon a weight in excess of the actual weight.

Furniture is light and bulky freight as compared with most other kinds of freight. The weight-carrying capacity of the standard car constructed to-day is from 60,000 to 100,000 pounds. The minimum established by the defendants for mixed shipments of furniture is 12,000 pounds, and the testimony shows that it is sometimes impossible to load even this weight into the car.

The weight of furniture which can be put into a car varies with the kind of furniture and frequently with the grade of furniture. Cheap furniture is usually made of lighter wood and contains less wood than that of a higher grade. It is therefore possible to load more high-grade furniture than cheap furniture of the same kind. Much depends upon the form of the article and the manner in which it is presented for shipment. Tables standing upon their legs are comparatively bulky, while if knocked down and properly packed they load much more heavily. Something also depends upon the manner in which the furniture is placed in the car. One person by exercising greater skill or care may load a car more compactly than another.

It is not, as a practical matter, possible to establish a minimum for each kind of furniture; nor could such minimums if established be made available under all circumstances, since the consignee frequently, and perhaps usually, desires to put different sorts of furniture into the same car.

It is evident that the cost of the movement to the carrier depends upon the weight of furniture which can be loaded into a car. The

weight of the car itself is perhaps 36,000 pounds, and this must be hauled whether the contents weigh much or little. The expense of transporting a car containing 20,000 pounds of furniture is not much greater than the expense of carrying the same car if it contains but 10,000 pounds. Plainly, it is in the interest of economical transportation that cars containing these light and bulky articles should be loaded as heavily as possible, and it is equally plain that the carrier can afford, to an extent, to decrease its rates in proportion as the loading increases.

In dealing with the transportation of such a commodity the carrier may both for the purpose of securing the greatest possible use of the capacity of its car and for the purpose of protecting itself against an unduly low charge for a carload movement, establish a minimum below which the carload rate shall not be applied. Nor is the minimum thus established of necessity unlawful, because it may happen in some instances that the weight prescribed can not by any possibility be put into the car. It is no hardship in such case to require the shipper to pay either the L. C. L. rate on the number of pounds actually shipped by him or the C. L. rate on the number of pounds fixed by the minimum.

We do not therefore sustain the contention of the complainant in this respect.

The proposition of the defendants is that a minimum may be established which shall protect the carrier against being required to haul its car for less than a fair compensation, and that so long as the combination of rate and minimum in a particular case does not yield to the railway more than a just sum for the transportation of the car, the minimum is not unlawful.

It is certain that the objective point is the charge to the shipper for the service, which is worked out by the combined application of rate and minimum. It would seem to follow, therefore, that there is a connection between the minimum and the rate. If the minimum is reduced the rate may be properly advanced, and if the minimum is increased the rate should be reduced. This principle has been observed in fixing the rates and the minimums applicable to the movement of many kinds of furniture, and within proper limits is a reasonable one.

It is not possible, however, to fairly adjust the rate without a proper adjustment of the minimum. The testimony in these cases shows that the minimums have been fixed with a view to producing about \$250 per car. If the carrier may properly provide that it will not receive less than a certain sum for the transportation of a car across the continent, the shipper may also ask to be protected upon the same theory against being compelled to pay more than a certain sum. This would logically lead to the fixing of a rate by the car, allowing the

shipper to make whatever use he could of the car, and against this the carriers themselves most earnestly protest. While the minimums are based upon earnings of not less than \$250 per car, the average earnings of all carloads very much exceed that sum. If furniture of a certain kind can only be loaded to 10,000 pounds while furniture of another kind can be loaded to 20,000 pounds, and the minimum is 20,000 pounds, then the shipper of the more bulky furniture pays the railroad company the same amount as the shipper of the heavier furniture, although the cost to the railroad of handling the heavier car is more, but not twice as much, as the cost of handling the lighter car.

While the attorneys for the defendants take the foregoing position, an examination of the testimony of the different traffic officials in this record will show that ordinarily it is the aim in establishing a minimum for the transportation of a light and bulky article like furniture to name such a figure as can ordinarily be loaded. This, we think, states the correct rule. The minimum applicable to furniture of various kinds need not be so low that reed furniture could be loaded to that minimum; but it should be low enough so that as furniture of all kinds is shipped it can ordinarily be complied with.

No distinction is made in the transcontinental tariff establishing these minimums between cars of different length. In point of fact the cars actually used in this service vary greatly in loading capacity. The standard car, 36 feet in length, is 8½ feet wide by 8 feet high, having a cubical capacity of 2,448 feet. The ordinary 40-foot furniture car is 8½ feet wide by 8½ feet high, with a cubical capacity of 2,890 feet. The ordinary 50-foot furniture car is 8 feet 7 inches wide by 9 feet 3 inches high, with a cubical capacity of 3,969 feet. It is plain, therefore, that if the rule above stated by the Commission is correct the minimum might vary according to the cubical capacity of the car.

In Official Classification territory this principle is recognized, although the difference does not correspond accurately with the difference in cubical capacity. The minimum for mixed furniture is 10,000 pounds for cars 36 feet in length, 12,500 pounds for cars 40 feet in length, 15,000 pounds for cars 50 feet in length. Is this transcontinental tariff unlawful because it fails to state different minimums for cars of different sizes?

A tariff is not *per se* unlawful for that reason. If, for example, a minimum of 30,000 pounds were established applicable to the transportation of coal it would not be an unlawful provision, for the reason that coal can be loaded into any sort of a car in ordinary use, up to 30,000 pounds, and no discrimination would therefore result. Such a provision might be a foolish one, but would not be in violation of the act to regulate commerce. It is equally plain that in the present case discrimination between shippers has resulted.

The carriers were required to produce statements showing the number of cars of furniture moving from eastern destinations to San Francisco and Los Angeles during the years 1907 and 1908, giving, in each case, the length of the cars. From these statements it appears that in the year 1907 1,680 cars moved, of which 960 were 40 feet in length and 439 50 feet in length; that during the year 1908 the number moving was 835, of which 298 were 40 feet in length and 427 50 feet in length. A considerable number of these cars were not loaded to the minimum, and upon those cars the shipper was required to pay for weight which he did not actually ship. The failure to load the minimum almost invariably, although not always, was with cars 40 feet and less in length. In such cases, had a car 50 feet in length been furnished, the minimum would have been loaded. Hence the shipper who obtained the 50-foot car has paid on the actual weight of his shipment, while the shipper furnished with the 40-foot car has paid on more than the actual weight.

No claim is made by the complainants, as we understand the case presented by them, that the tariff is unlawful for failure to establish different minimums for cars of different sizes. The complaint does not refer to this form of discrimination. The attorney for the complainant points out in his brief that the shipper who obtains the 50-foot car has the advantage over him who obtains the 40-foot car; but this is referred to not to establish the unlawfulness of the tariff, but in support of the proposition that it is illegal to charge for more than the actual weight where the car is loaded to its physical capacity and where the shipper has additional goods which he might ship and desires to ship in that car. Since this point is not put in issue by the complaint, has not been referred to upon the testimony, nor discussed in brief or argument, we shall express no opinion upon it at this time. It is one of great practical importance which should receive the early attention of carriers. We have, therefore, to inquire whether the minimums involved can ordinarily be loaded and whether they are by that test unlawful; and this raises the further question, By what capacity car shall the test be applied? Shall we use for that purpose a car 36, 40, or 50 feet in length?

It appears from the testimony that when these minimums were established the 40-foot car was understood to be the standard furniture car and that the minimums were fixed with reference to the capacity of that car. Originally, on account of operating conditions, 50-foot cars were not used in this transcontinental business; but after a time, as conditions changed, these larger cars gradually found their way into this service. An attempt was made in 1907 to introduce a sliding scale, applying a greater minimum to the larger car, and this scale was in effect from May until November. Representatives of the Santa Fe and Southern Pacific lines

testified that it was found impossible to continue this sliding scale for the reason that northern lines declined to adopt it and competitive conditions forced the same rule upon all transcontinental roads. In passing upon the reasonableness of these minimums we shall use as a standard the car 40 feet in length, meaning by that a car whose inside measurements are not less than 39 feet 6 inches nor greater than 40 feet 6 inches.

Applying then to a car 40 feet in length the rule that the minimum should be such as can ordinarily be loaded, we reach the following conclusions with respect to the various minimums put in issue in these proceedings. These conclusions are based partly upon the testimony of witnesses and partly upon actual experience. The carriers were required to state the number of carloads of each commodity which had moved during the last two years, giving the number which had loaded to the minimum and the number which had fallen below the minimum.

1. *Wood mantels*.—The minimum weight is now 16,000 pounds. It was conceded by the defendants and abundantly appears from the experience of the last two years that this minimum can not be loaded. The character of the mantels shipped seems probably to have changed since the minimum was fixed. In our opinion, during the time covered by these proceedings and for the future the minimum for a car 40 feet in length ought not to exceed 14,000 pounds.

2. *Steel bath tubs*.—Minimum, 10,000 pounds. The testimony shows that this weight can with care be loaded into a car 40 feet in length, and we are of the opinion that the present minimum is reasonable.

3. *New furniture*.—Minimum, 12,000 pounds. This is the minimum under which the largest movement occurs. While some kinds of furniture, notably reed furniture, can not be loaded up to this weight even in a car 50 feet in length, ordinarily, if reasonable care is exercised in the packing, the minimum can be complied with, and is in our opinion a reasonable one.

4. *Bedroom furniture*.—From northern territory, when released to a certain value, this takes a minimum of 20,000 pounds. The defendants have established this minimum and applied to it a rate of \$1.50, which is materially lower than the ordinary furniture rate, to enable manufacturers of this furniture to move their product more cheaply. The testimony shows that the minimum can be usually loaded, although, in a number of cases, this was found impossible. We are of the opinion that this minimum, as applied to the movement of this commodity, ought not to be disturbed. The manufacturer of bedroom furniture can, if he desires, ship his goods as furniture under 12,000-pound minimum and the \$2.20 rate, in which event the minimum can be easily complied with.

From Carolina and Dalton territory the minimum was formerly 16,000 pounds for cars 36 feet in length. Recently it has been reduced from Carolina territory to 14,000 pounds, the rate having been at the same time advanced from \$1.70 to \$1.85. We hold upon this record that the 16,000-pound minimum was and is reasonable. The present minimum from Carolina territory was established under arrangement with the manufacturers, who seem to have consented, as a part of that arrangement, to an increase in the rate.

5. *Iron and brass beds*.—When these complaints were filed the minimum was 30,000 pounds. Experience clearly shows that this minimum can not be loaded. In our opinion it ought not to exceed 24,000 pounds, and an examination of the tariffs shows that this minimum has been reduced to and now stands at this figure.

6. *Folding beds*.—The minimum is now 20,000 pounds, which can ordinarily be loaded into a car 40 feet in length, and is reasonable.

7. *Mattresses and springs*.—The present minimum from northern territory is 20,000 pounds, and this can be loaded into a 40-foot car. The minimum from Dalton and Carolina territory is 30,000 pounds. No testimony was introduced bearing upon this minimum. The statements do not show whether any movement has occurred under it from southern territory. We therefore hold that the 20,000-pound minimum is reasonable and express no opinion as to the 30,000-pound minimum.

8. *Chairs and chair stock*.—This minimum from northern territory is 20,000 pounds. We think it fairly applies to chairs knocked down, and if so, it can be readily loaded and is reasonable. Chairs when set up can go as furniture under the 12,000-pound minimum. The minimum from Dalton and Carolina territory is 30,000 pounds. This record contains no evidence upon which an opinion as to the reasonableness of this minimum can be based.

9. *Tables*.—Minimum 24,000 pounds. Tables with the legs on can not be loaded ordinarily to this minimum. When the legs are removed and the table is shipped partially or entirely knocked down this weight can be readily loaded into a car 40 feet in length. The minimum itself was evidently intended to cover the shipment of tables in this form and should be so construed. Under the present tariff the shipper has his election to ship his tables knocked down at this rate, in which event the minimum can be easily loaded, or to ship his tables as furniture, paying the higher rate, and in that case the minimum, 12,000 pounds, can be readily met; or he may ship his tables set up under the lower rate; but in that event he must ordinarily pay on a minimum weight which exceeds the actual weight. There is nothing unjust in this.

These findings are, we repeat, for cars 40 feet in length, except in some instances from the south as stated. It necessarily follows that

they are too high for cars 36 feet in length. The statements furnished show that very few of these cars are used in this furniture traffic. If the defendants desire to continue their use at all, they should provide an appropriate minimum for such cars. In complying with the order which will be made carriers may, if they see fit, establish a sliding scale, taking the minimum ordered by the Commission for the 40-foot car as a basis. In such event they may determine for themselves in the first instance the relation between cars of different lengths, that relation being, of course, subject to revision by the Commission upon proper proceedings.

We wish to repeat that the foregoing findings are based largely upon the testimony of traffic officials and upon actual experience as evidenced by the movement of this traffic. There is very little testimony from shippers in this record bearing upon these minimums, and that testimony is not of a satisfactory character. If, for example, the manufacturers and shippers of reed furniture were to claim that a special minimum ought to be established for the movement of that kind of furniture, we should feel in no wise concluded by our findings in this case.

All these petitions claim damages for the reason that the complainants have been compelled to pay upon a weight in excess of that actually shipped. We have found that in the majority of cases the minimums in force were reasonable, and from this it follows that the defendant might lawfully assess their charges upon that minimum, even though the car were loaded to its full capacity and did not contain that number of pounds. Cases involving those minimums found reasonable should be dismissed.

Reparation should be allowed upon shipments of wood mantels upon the basis of 14,000 pounds for a car 40 feet in length, and upon brass bedsteads upon a basis of 24,000 pounds minimum for a car of the same length. In case a 36-foot car was furnished for the transportation of any of these commodities upon which we have fixed the minimum applicable to a car 40 feet in length that minimum should be reduced one-ninth and a minimum for the 36-foot car thereby established.

We have not felt called upon to determine the legality of these tariffs, in that they fix but one minimum for cars of different lengths, as bearing upon the question of reparation, because we are agreed that even if those tariffs were to be held unlawful upon that ground, reparation should not be awarded. Tariffs of that kind have been long in effect in most parts of this country. If this Commission were now, as a matter of judgment, to hold that such tariffs should be changed for the future, that would by no means amount to a holding that they had been unlawful in the past.

In this particular case, No. 1934, the complainant shipped a carload of wood mantels from Chicago to San Francisco, in September,

1907. The actual weight of the shipment was 17,900 pounds. The car was 50 feet in length, and since the sliding scale was at that time in effect a minimum of 20,000 pounds was applied and charges assessed upon that weight at \$1:50 per 100 pounds. We are of the opinion, and find, that 14,000 pounds would have been a reasonable minimum for a car 40 feet in length, and 17,500 pounds for a car 50 feet in length. The loading of this car, therefore, exceeded a reasonable minimum and the shipment should have been charged for at its actual weight, or the aggregate charges should have been \$268.50. The defendants have, therefore, exacted of the complainant \$31.50 more than a just and reasonable charge for this service, and should be directed to repay the same with interest.

In case No. 1935, *W. W. Montague & Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, heard with No. 1934, the complainant shipped a carload of wood mantels from Chicago, Ill., to San Francisco, Cal., on or about December 20, 1906. The actual weight of the shipment was 11,900 pounds, but a minimum of 16,000 pounds was applied and charges assessed upon that weight at \$1.50 per 100 pounds. We are of the opinion, and find, that 14,000 pounds would have been a reasonable minimum for this shipment, and the freight should have been assessed on that basis, or \$210. The defendant has therefore exacted of the complainant \$30 more than a just and reasonable charge for this service, and should be directed to pay the same with interest.

In case No. 1954, *W. W. Montague & Co. v. Illinois Central Railroad Co., Southern Pacific Co., and Union Pacific Railroad Co.*, heard with No. 1934, the complainant shipped a carload of wood mantels from Decatur, Ill., to San Francisco, Cal., on or about June 29, 1907. The actual weight of the shipment was 18,000 pounds. The car was 50 feet in length, and since the sliding scale was at that time in effect a minimum of 20,000 pounds was applied and charges assessed upon that weight at \$1.50 per 100 pounds. We are of the opinion, and find, that 17,500 pounds would have been a reasonable minimum for this car. The loading of this car therefore exceeded a reasonable minimum and the shipment should have been charged for at its actual weight, or the aggregate charges should have been \$270. The defendants have therefore exacted of the complainant \$30 more than a just and reasonable charge for this service, and should be directed to repay the same with interest.

In case No. 1953, *W. W. Montague & Co. v. Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., and Southern Pacific Co.*, heard with No. 1934, complainant shipped a carload of wood mantels from Chicago, Ill., to San Francisco, Cal., on or about June 10, 1907. The actual weight of the shipment was 12,200 pounds, but a minimum of 16,000 pounds was applied and charges assessed upon that weight at \$1.50 per 100 pounds. We are of the opinion, and

find, that 14,000 pounds would have been a reasonable minimum for this shipment and the freight should have been assessed on that basis, or \$210. The defendants have therefore exacted of the complainant \$30 more than a just and reasonable charge for this service, and should be directed to repay the same with interest.

In case No. 1955, *W. W. Montague & Co. v. Chicago, Burlington & Quincy R. R. Co., Colorado & Southern Ry. Co., Denver & Rio Grande R. R. Co., and Southern Pacific Co.*, heard with No. 1934, the complainant shipped a carload of wood mantels from Chicago, Ill., to San Francisco, Cal., on or about March 26, 1907. The actual weight of the shipment was 10,700 pounds, but a minimum of 16,000 pounds was applied, and charges assessed upon that weight at \$1.50 per 100 pounds. We are of the opinion, and find, that 14,000 pounds would have been a reasonable minimum for this shipment and the freight should have been assessed on that basis, or \$210. The defendant has therefore exacted of the complainant \$30 more than a just and reasonable charge for this service, and should be directed to repay the same with interest.

In case No. 1964, *Thomas F. Rigney v. Southern Pacific Co., Union Pacific R. R. Co., Chicago, Rock Island & Pacific Ry. Co., and Wabash R. R. Co.*, heard with No. 1934, the complainant shipped a carload of wood mantels from Decatur, Ill., to San Francisco, Cal., on or about January 1, 1907. The actual weight of the shipment was 13,900 pounds, but a minimum of 16,000 pounds was applied and charges assessed upon that weight at \$1.50 per 100 pounds. We are of the opinion, and find, that 14,000 pounds would have been a reasonable minimum for this service and the freight should have been assessed on that basis, or \$210. The defendant has, therefore, exacted of the complainant \$30 more than a just and reasonable charge for this shipment, and should be directed to repay the same with interest.

In case No. 2003, *Thomas F. Rigney v. Southern Pacific Co., Union Pacific R. R. Co., and Illinois Central R. R. Co.*, heard with No. 1934, the complainant shipped two carloads of wood mantels from Decatur, Ill., to San Francisco, Cal. The first shipment moved on or about December 31, 1906, the actual weight of which was 15,300 pounds, but a minimum of 16,000 pounds was applied and charges assessed upon that weight at \$1.50 per 100 pounds. We are of the opinion, and find, that 14,000 pounds would have been a reasonable minimum for this shipment. The loading of this car, therefore, exceeded a reasonable minimum and the shipment should have been charged for at its actual weight, or the aggregate charges should have been \$229.50. The excessive charge, therefore, was \$10.50. The second shipment moved during November, 1907. The actual weight of the shipment was 16,100 pounds. The car was 50 feet in length, and since the sliding scale was at that time in effect a minimum of

20,000 pounds was applied and charges assessed upon that weight at \$1.50 per 100 pounds. We are of the opinion, and find, that 17,500 pounds would have been a reasonable minimum for this shipment and the freight should have been assessed on that basis, or \$262.50. The overcharge, therefore, was \$37.50. The defendants have, therefore, exacted of the complainant \$48 more than a just and reasonable charge for this service, and should be directed to repay the same with interest.

In case No. 2004, *Thomas F. Rigney v. Southern Pacific Co., Galveston, Harrisburg & San Antonio Ry. Co., Morgan's Louisiana & Texas R. R. & Steamship Co., Texas & New Orleans R. R. Co., Illinois Central R. R. Co., and Baltimore & Ohio Southwestern R. R. Co.*, heard with No. 1934, the complainant shipped a carload of wood mantels from Brighton, Ohio, to San Francisco, Cal., on or about September 9, 1907. The actual weight of the shipment was 12,600 pounds and the L. C. L. rate assessed, the total charges amounting to \$283.50. The car was 50 feet in length, and since the sliding scale was at that time in effect a minimum of 17,500 pounds should have been applied to this car and the freight should have been assessed on that basis, or \$262.50. The defendant has, therefore, exacted of the complainant \$21 more than a just and reasonable charge for this service and should be directed to repay the same with interest.

In case No. 2046, *Royal Mantel Co. v. Southern Pacific Co., Galveston, Harrisburg & San Antonio Ry. Co., El Paso & Southwestern R. R. Co., El Paso & Northeastern Ry. Co., El Paso & Rock Island Ry. Co., Chicago, Rock Island & Pacific Ry. Co., Chicago, Milwaukee & St. Paul Ry. Co., Chicago, Rock Island & Gulf Ry. Co., and Chicago, Rock Island & El Paso Ry. Co.*, heard with No. 1934, the complainant shipped a carload of wood mantels from Chicago, Ill., to San Francisco, Cal., on or about November 31, 1906. The complaint was filed January 19, 1909, and the freight charges paid March 13, 1907. This case is therefore not barred by the statute of limitations. The actual weight of the shipment was 14,200 pounds, but a minimum of 16,000 pounds was applied and charges assessed on that weight at \$1.50 per 100 pounds. We are of the opinion, and find, that 14,000 pounds would have been a reasonable minimum for this shipment. The loading of this car, therefore, exceeded a reasonable minimum, and the shipment should have been assessed on the actual weight at \$1.50 per 100 pounds, or a total charge of \$213. The defendants, therefore, have exacted of the complainant \$27 more than a just and reasonable charge for this service, and should be directed to repay the same with interest.

In case No. 2085, *Pacific Purchasing Co. v. Atchison, Topeka & Santa Fe Ry. Co., and Chicago & North Western Railway Co.*, heard with

No. 1934, the complainant shipped a carload of brass beds from Kenosha, Wis., to Los Angeles, Cal., on or about December 21, 1906. The complaint was filed January 29, 1909, but the freight bill was not paid until February 8, 1907, and is therefore not barred by the statute. The actual weight of the shipment was 27,500 pounds. The car was 40 feet in length. A minimum of 30,000 pounds was applied and charges assessed on that weight at \$1.65 per 100 pounds. We are of the opinion, and find, that 24,000 pounds would have been a reasonable minimum for this car. The loading exceeded, therefore, a reasonable minimum and the shipment should have been charged for at its actual weight at \$1.65 per 100 pounds, or the aggregate charges should have been \$453.75. The defendants have, therefore, exacted of the complainant \$41.25 more than a total and reasonable charge for this service and should be directed to repay the same with interest.

In case No. 2083, *Thomas F. Rigney v. Southern Pacific Co., Denver & Rio Grande Railroad Co., Missouri Pacific Ry. Co., and Wabash Railroad Co.*, heard with number 1934, the complainant shipped two carloads of wood mantels from Decatur, Ill., to San Francisco, Cal. The first shipment moved on November 13, 1906, the actual weight of which was 12,500 pounds, but a minimum of 16,000 pounds was applied and charges assessed upon that weight at \$1.50 per 100 pounds. We are of the opinion and find that 14,000 pounds would have been a reasonable minimum for this shipment. The excessive charge therefore was \$30. The second shipment moved December 5, 1906. The actual weight of the shipment was 15,000 pounds, but a minimum of 16,000 pounds was applied and charges assessed on that weight of \$1.50 per 100 pounds. We are of the opinion and find that 14,000 pounds would have been a reasonable minimum for this shipment. The loading of this car therefore exceeded a reasonable minimum and the shipment should have been charged for at its actual weight, or the aggregate charges should have been \$225. The excessive charge therefore was \$15. The complaint was filed January 27, 1909, and the freight charges paid January 29, 1907. This case therefore is not barred by the statute of limitations. The defendants have therefore exacted of the complainant \$45 more than a just and reasonable charge for this service and should be directed to repay the same with interest.

In case No. 1936, *W. W. Montague & Co. v. Atchison, Topeka & Santa Fe Railway Co. and Vandalia Railroad Co.*, heard with No. 1934, the complainant shipped a carload of wood mantels from Decatur, Ill., to San Francisco, Cal., on or about October 30, 1906. The actual weight of the shipment was 13,500 pounds, but a minimum of 16,000 pounds was applied and charges assessed upon that weight of \$1.50 per 100 pounds. We are of the opinion that 14,000 pounds

would have been a reasonable minimum for this shipment. The excessive charge therefore was \$30. The formal complaint was filed December 12, 1908, but the matter was presented to this Commission informally June 12, 1908. This case therefore is not barred by the statute of limitations. The defendants have therefore exacted from the complainant \$30 more than a just and reasonable charge for this service and should be directed to repay the same with interest.

The following cases heard with No. 1934 should be dismissed:

No. 1988, *Pacific Purchasing Co. v. Southern Pacific Co. et al.*; No. 1989, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 1990, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 1991, *Same v. Southern Pacific Co. et al.*; No. 1992, *Same v. Union Pacific R. R. Co. et al.*; No. 1993, *Same v. Atchison, Topeka & Santa Fe Ry. Co.*; No. 1994, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 1995, *Same v. Galveston, Harrisburg & San Antonio Ry. Co. et al.*; No. 1996, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 1997, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 1998, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 2007, *Same v. Southern Pacific Co. et al.*; No. 2008, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 2013, *Same v. Southern Pacific Co. et al.*; No. 2014, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 2022, *Same v. Southern Pacific Co. et al.*; No. 2023, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 2025, *Same v. Southern Pacific Co. et al.*; No. 2026, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 2032, *Same v. Southern Pacific Co. et al.*; No. 2053, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 2054, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 2055, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2056, *Same v. Southern Pacific Co. et al.*; No. 2104, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*; No. 2171, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2186, *Same v. San Pedro, Los Angeles & Salt Lake R. R. Co. et al.*

No. 2033, *Bare Brothers v. Southern Pacific Co. et al.*; No. 2034, *Same v. Southern Pacific Co. et al.*

No. 2028, *Eastern Outfitting Co. v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2035, *Same v. Southern Pacific Co. et al.*; No. 2036, *Same v. Southern Pacific Co. et al.*

No. 2153, *Coast Carriage Co. v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2092, *Same v. Southern Pacific Co. et al.*

Nos. 2142, 2143, and 2144, *Milton Heyneman & Co. v. Atchison, Topeka & Santa Fe Ry. Co. et al.*

No. 1966, *Michigan Furniture Co. v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 1967, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 1968, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*;

No. 1969, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2027, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2037, *Same v. Southern Pacific Co. et al.*; No. 2038, *Same v. Southern Pacific Co. et al.*

No. 1965, *Friedman & Co. v. Atchison, Topeka & Santa Fe Ry. Co.*; No. 2141, *Same v. Atchison, Topeka & Santa Fe Ry. Co.*

No. 2156, *Walter S. Mackay & Co. v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2157, *Same v. Southern Pacific Co. et al.*; No. 2158, *Same v. Southern Pacific Co. et al.*; No. 2159, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*

No. 2185, *Dean & Humphrey Co. v. Southern Pacific Company et al.*

No. 2097, *O'Brien Commercial Co. v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2098, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2099, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2100, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2101, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2102, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*; No. 2103, *Same v. Southern Pacific Co. et al.*; No. 2166, *Same v. Atchison, Topeka & Santa Fe Ry. Co. et al.*

No. 2005, *W. W. Montague & Co. v. Southern Pacific Co. et al.*; No. 2006, *Same v. Southern Pacific Co. et al.*

No. 1940.

BEEKMAN LUMBER COMPANY

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 22, 1909. Decided June 28, 1909.

Tariff under which shipment moved provided for charge of \$5 per car for reconsignment. This charge is excessive where only name of consignee is changed. One dollar per car is a reasonable charge for the service in this case.

T. C. Skeen for complainant.

C. W. Moore and *Fred. H. Wood* for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant on June 17, 1907, shipped from De Ridder, La., a station on the Texarkana & Fort Smith Railway, one carload of pine lumber, consigned to itself at Fort Smith, Ark. After it reached Fort Smith, while in the custody of the Kansas City Southern, awaiting delivery, the complainant notified that company by telephone, confirming it by subsequent letter, to make delivery of the carload to the Ballman-Cummings Furniture Company, at Fort

Smith, and the car was so delivered. The destination of the car was in no respect changed, and, so far as appears, the defendant, Kansas City Southern, incurred no additional expense in making this delivery over what would have been incurred in making delivery to the Beekman Company.

The tariff of the defendants under which this lumber moved contained the following provision:

All lumber reconsigned in transit or after arrival at destination will be subject to an additional charge of \$5 per car, cars to be subject to regular demurrage charges in addition thereto.

The defendants claiming that this was a reconsignment of the carload of lumber have collected an additional \$5.

In this case there was no change in destination. The car was simply delivered to the Ballman-Cummings Furniture Company instead of being delivered to the Beekman Lumber Company. No additional expense was involved. The expense bill was made out to the Beekman Lumber Company. The Kansas City Southern simply wrote in red ink across the bill: "Reconsign to Ballman-Cummings, F. C., \$5."

In the ordinary acceptance of the term, a reconsignment refers to a change in destination, accompanied or not by a change in the name of the consignee, rather than to a mere change in the name of the consignee; but the latter change is recognized by our conference ruling No. 72 as a reconsignment and the defendants are therefore justified in putting that interpretation upon their tariff. It does not follow, however, that carriers should impose the same charge for every reconsignment. The conference ruling correctly states the case. The privilege of reconsignment is a thing of value to the shipper and of expense to the carrier; therefore a charge may be made; but the value and extent of that service vary and the charge should be in proportion to the service. In this case it is unreasonable to exact \$5 for simply changing the name of this consignee. In *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 15 I. C. C. Rep., 546, it was held that \$5 was an unreasonable charge for the reconsignment of carloads of coal, although a change in destination and an additional movement was involved, \$2 being held sufficient. A mere change in consignee must often involve additional clerical work and perhaps additional responsibility, and we have concluded to allow \$1.

We find that the complainant has been compelled to pay \$4 in excess of a reasonable charge, for which an order of reparation, with interest, will be allowed; and we further find that \$1 will be a reasonable charge to be made for this service in the future; and it will be so ordered.

No. 1824.

HERBECK-DEMER COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL

Submitted April 17, 1909. Decided June 28, 1909.

The act does not forbid all discrimination, but only that which is undue. A discrimination involved in the carrying of the personal baggage of a passenger without extra charge is not undue as against a passenger without baggage.

Emil Herbeck for complainant.

Henry Wolf Bikle for Pennsylvania Railroad Company.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The passenger fares of the defendants include the free transportation of 150 pounds of baggage. The complainant is a manufacturer of glassware, who sends out traveling sales-men, or drummers, carrying sample trunks weighing about 1,250 pounds. The defendants treat these samples as baggage, deduct 150 pounds, and make an excess charge for carrying the balance. The complaint insists that it is illegal for the defendants to accord free transportation to any amount of baggage, the idea being, apparently, that if the railways charged for all the baggage transported they might well reduce the charge now made for the transportation of excess baggage, whereby the complainant would be benefited. The only question presented is the legality of according free transportation to baggage.

The complainant urges that most passengers travel with only such baggage as they take into the car with them; that when a railroad charges the same amount for carrying a passenger without baggage and a passenger and his trunk weighing 150 pounds, it has performed

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a greater service for the second person than for the first and has therefore discriminated in favor of that passenger.

It is certainly true that the service performed by the railway for the passenger with the trunk is greater than that performed for the passenger without baggage, and so is the service performed in transporting a passenger who weighs 300 pounds greater than that performed in carrying one who weighs but 100 pounds. The act to regulate commerce does not forbid all discrimination, but only that which is *undue*, and we hold that such discrimination as may be involved in the carrying of the personal baggage of a passenger without extra charge is not undue and therefore that the practice is not unlawful.

A railroad may properly carry for one charge the passenger and his personal baggage; it may, for its own convenience and the convenience of the traveling public, provide a separate car for the transportation of the baggage, and it may limit the amount of baggage to be carried free and make a charge for the excess.

Whether 150 pounds is a reasonable limitation of the amount of personal baggage, or whether the samples of a drummer ought properly to be carried as baggage at all, or whether the excess rates charged by these defendants are reasonable are questions not presented by the record and not considered or decided.

The complaint will be dismissed.

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No. 1924.

MEMPHIS FREIGHT BUREAU

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL

Submitted May 11, 1909. Decided June 28, 1909.

1. Where a transportation service has been rendered for which no tariff authority whatever exists and where the shipper has paid the sum claimed by the carrier for that service, the Commission has jurisdiction to inquire what was a reasonable charge for the service and to order the repayment of whatever the carrier has collected over and above such reasonable charge.
2. Reparation allowed with respect to shipment of peaches from Horatio, Ark., to Memphis, Tenn.

James S. Davant for complainants.

G. H. Hamilton for Kansas City Southern Railway Company.

E. B. Peirce and *J. H. Doughty* for Chicago, Rock Island & Pacific Railway Company.

E. B. Peirce and *E. K. Voorhees* for St. Louis & San Francisco Railroad Company.

S. H. West and *Roy F. Britton* for St. Louis Southwestern Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint was brought by the Memphis Freight Bureau, a voluntary mercantile association, on behalf of the city of Memphis; of certain shippers located there; and, particularly, of A. S. Barboro & Company, a copartnership member of said association, wholesale produce merchants. The complaint alleged certain rates on fruit from Horatio, Ark., to Memphis, Tenn., to be not only excessive, unjust, and unreasonable, but, as compared with the rates on the same articles from the same place to St. Louis, Mo., to subject the people of Memphis to unjust discrimination and to undue and unreasonable prejudice and disadvantage. One specific shipment of a carload of peaches, moving July 26, 1907, from Horatio, Ark., to A. S. Barboro & Company, Memphis, Tenn., on which reparation was asked, was fully set forth in the complaint. The prayers asked that the discriminations against Memphis be corrected; that the

refrigeration and icing charges be investigated, and that reparation be awarded A. S. Barboro & Company for the unjust and excessive charges collected on the shipment set forth.

At the hearing the case narrowed down to a mere claim for reparation, the shipment having moved via the defendants, the Kansas City Southern Railway, to Texarkana, and thence via the St. Louis Southwestern Railway to destination; a commodity rate via other lines than the St. Louis Southwestern satisfactory to the complainant having been established.

The facts in reference to this shipment are as follows: On July 26, 1907, one carload of 960 four-basket carriers of peaches was shipped from Horatio, Ark., to A. S. Barboro & Company, Memphis, Tenn. The shipment moved over the line of the Kansas City Southern Railway to Texarkana, and thence over the line of the St. Louis Southwestern to destination. There being no commodity rate in effect at the time, charges were assessed upon a minimum carload weight of 24,000 pounds at the third class rate of 89 cents per 100 pounds, or \$213.60 for freight; for refrigeration a charge of \$70.50 was collected. The actual weight of the shipment was 21,120 pounds. The minimum applicable to said shipment was 20,000 pounds. The rate should have been applied to the actual weight of the shipment, and the collection of the rate on a minimum of 24,000 pounds was erroneous.

Effective June 3, 1908, the Kansas City Southern Railway, in connection with other carriers than the St. Louis Southwestern, established a commodity rate on peaches from Horatio, Ark., to Memphis, Tenn., of 39 cents per 100 pounds, and a refrigeration charge of 5 cents per crate of 4-basket carriers, and this rate is now in effect. The St. Louis Southwestern has declined to become a party to this tariff on the ground that the rates are too low.

We are of the opinion, and find, that the rate of 89 cents, assessed for the transportation of this carload of peaches, was excessive; that 43 cents would have been a just and reasonable rate to apply to the actual weight of the shipment, and that the defendants, Kansas City Southern Railway Company and St. Louis Southwestern Railway Company, have exacted of A. S. Barboro & Company \$122.79 more than should have been charged on account of the transportation proper. We are further of the opinion that \$70.50 was an excessive charge for refrigeration; that \$48 would have been a reasonable charge, and that the above defendants have therefore exacted from said Barboro & Company the sum of \$22.50 more than is reasonable on account of these icing charges.

The rate of 89 cents was duly published, but there was no tariff whatever for refrigeration. We hold that where a transportation

service has been rendered for which no tariff authority whatever existed at the time, and where the shipper has paid the sum claimed by the carrier for that service, this Commission has jurisdiction to inquire what was a reasonable charge for the service and to order the repayment of whatever the carrier has collected over and above such reasonable charge. It can not order a repayment of the entire amount paid, since the authority of this Commission only extends to the awarding of damages for violations of the act, and certainly there are no damages in any proper sense of the word unless the shipper has been compelled to pay more than a reasonable rate. Moreover, to hold that one shipper should pay nothing for his transportation while his competitor shipping perhaps the next day must pay a reasonable charge, would be to permit and create the very discrimination which the act seeks to prevent.

An order will therefore be issued, directing these defendants to repay A. S. Barboro & Company the sum of \$145.29, with interest.

While this Commission, as we construe the law, has no authority to order a repayment of the entire amount of these icing charges, it is required to see that the provisions of the act to regulate commerce are observed. Among the most essential of those provisions is that one requiring carriers to publish tariffs and prohibiting them from moving traffic until a tariff has been properly published. This case will be referred to the Division of Prosecutions to be further proceeded with.

COCKRELL, *Commissioner*, dissenting:

I am unable to concur in the opinion of the majority of the Commission in this case so far as the same refers to the charges assessed for refrigeration and icing. The carriers charged upon this shipment 6½ cents per crate for refrigeration, \$62.40, plus \$8.10 for icing, or a total of \$70.50, at a time when no refrigeration or icing charges applicable to such traffic between Horatio, Ark., and Memphis, Tenn., were on file with the Commission. My opinion is that under the act the carrier must specify in its schedules of rates, fares, and charges every service or privilege for which it can lawfully make any charge, and that the collection or retention of any sum whatever, large or small, reasonable or unreasonable, in amount, for refrigeration or icing not so specified in its schedules, was, and is, unlawful and that, therefore, the amount so collected in this case should be returned to the shipper as in the nature of a straight overcharge.

My reasons for this position are as follows:

1. The act became effective August 28, 1906.
2. The shipment moved July 26, 1907.
3. No tariff applicable to the movement on file with the Commission contains any charges for either refrigeration or icing under any designation.

4. The act is specific in its requirements.

(a) Section 1 provides:

The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

(b) Section 6 provides:

That every common carrier subject to the provisions of this act shall file with the Commission created by this act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad. * * * The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee.

(c) Section 6 further provides:

No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; * * * nor extend to any shipper or person any privileges or facilities in the transportation of * * * property, except such as are specified in such tariffs.

To my mind the matter hinges upon the provision, "nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation (*refrigeration or icing*) of * * * property, or for any service in connection therewith between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time." There were no "rates, fares or charges" specified for refrigeration or icing in the tariffs filed and in effect at the time, and, therefore, none, absolutely none, can lawfully be collected or retained by the carriers.

The powers and duties of this Commission are entirely statutory. Nowhere within the four corners of the act is the least scintilla of

common law or equity jurisdiction conferred upon the Commission. The report says:

We hold that where a transportation service has been rendered for which no tariff authority whatever exists, and where the shipper has paid the sum claimed by the carrier for that service, this Commission has jurisdiction to inquire what was a reasonable charge for the service and to order the repayment of whatever the carrier has collected over and above such reasonable charge.

In other words, such cases are to be handled on a *quantum meruit* basis. But if this doctrine be sound as to transactions in the past it should also hold true for present and for future dealings between carriers and shippers. I can not subscribe to any such conclusion; I can not believe that this Commission, where a transportation service (refrigeration or anything else) is now rendered, or is to be rendered in the future, for which no tariff authority whatever exists, and where the shipper has either paid or promised to pay the sum claimed, or about to be claimed, by the carrier for such service—I can not believe, I say, that this Commission has jurisdiction to inquire what is or may hereafter be a reasonable charge for the service.

The act imposes the duty of making just and reasonable rates upon the carriers themselves in the first instance. Nowhere is power to initiate rates conferred upon the Commission; nor does our jurisdiction cover an inquiry as to the value of the services, work, and labor performed by the carrier for the shipper, at his instance and request, independently of a rate legally filed by the carrier. After the carrier has established its "rates, fares, and charges," we have jurisdiction, under and in accordance with the act, to consider their reasonableness, but not before such rates, fares, and charges have been established, nor in their absence.

I am aware of the inconvenience that may be expected to follow this strict interpretation of the act. When the Hepburn bill was before the Congress many efforts were made to induce that body to give the Commission the power to initiate rates; the subject was debated on the floors of both branches of Congress and considered in the committee rooms; and the result was that the power, the right, the duty to initiate rates was left with the carriers themselves, and the only rate-making power vested in the Commission was of a revisionary, remedial, correctional character.

The requirements of the act are not met by saying that the services of icing and refrigeration were of value, perhaps necessary, to the shipment. The act is definite and specific and we can not go outside of it or beyond it.

No. 2064.
JAMES MANAHAN
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted June 1, 1909. Decided June 22, 1909.

Defendants' rates for the transportation of bituminous and anthracite coal in carloads from Duluth, Minn., and Superior Wis., to St. Paul and Minneapolis, Minn., not found, under the circumstances disclosed by the record, to be unreasonable.

James Manahan for complainant.

Charles Donnelly for Northern Pacific Railway Company.

J. D. Armstrong for Great Northern Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

It is alleged in this complaint that the rate of 90 cents per ton of 2,000 pounds on bituminous coal, in carloads, and the rate of \$1.25 per ton of 2,000 pounds on anthracite coal, in carloads, charged by defendants for transportation from Duluth, Minn., and Superior, Wis., to St. Paul and Minneapolis, Minn., are unreasonable. It is also alleged that these rates unduly discriminate against consumers of anthracite coal.

The defendants operate lines of railway from Duluth and Superior to St. Paul and Minneapolis and publish the rates in question. The Chicago, St. Paul, Minneapolis & Omaha Railway Company, not a party to this proceeding, also operates a line from and to the points named and publishes the same rates.

Distances from Duluth and Superior to Minneapolis and St. Paul are shown in the following table:

From—	To—	Great Northern.	Northern Pacific.	Chicago, St. Paul, Minneapolis & Omaha.
		<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Duluth.....	Minneapolis.....	151	165	186
Do.....	St. Paul.....	161	155	176
Superior.....	Minneapolis.....	147	168	182
Do.....	St. Paul.....	157	158	172

Duluth and Superior are at the "head of the lakes" and the distance to St. Paul and Minneapolis is assumed to be 155 miles via all lines for rate-making purposes.

Prior to February, 1897, the rate on anthracite coal was \$1.50 per ton between the points named. On that date it was reduced to \$1.25 per ton, which has been the rate ever since.

The rate on bituminous coal had been 90 cents per ton prior to the year 1899, when the Chesapeake & Ohio, in its effort to build up a flour traffic to Newport News, Va., made very low rates on this coal from the Virginia fields to St. Paul and Minneapolis, with the view of procuring tonnage for cars moving to Minneapolis for flour. To meet this rate the defendants established a 75-cent rate on bituminous coal from the head of the lakes to the Twin Cities.

This rate was continued for a few months, until December, 1899, when the defendants applied to the state railroad commission of Minnesota and that body authorized the restoration of the 90-cent rate. In December, 1906, the state commission made an order fixing rates on various commodities, including coal, in the state of Minnesota. Under that order rates for a distance of 155 miles on coal, in carloads, would have been \$1.10 on anthracite and 88 cents on bituminous coal. This order was enjoined by the federal court. In 1907 the state legislature passed an act (chapter 232, Laws of 1907) fixing the rate on anthracite coal for a distance of 155 miles at \$1.20, and on bituminous coal at 96 cents. The validity of this act is now being contested in the courts.

The following table shows rates on hard and soft coal fixed by the state commissions of Minnesota, Iowa, and Illinois, and by certain railroads, for hauls of 155 miles or greater:

Rates on hard and soft coal, per ton of 2,000 pounds.

Mileage.	Established by—	Hard.	Soft.
155.....	Minnesota Commission order, December, 1906.....	\$1.10	\$0.88
155.....	Minnesota, chapter 232.....	1.20	.96
155.....	Iowa, Distance Tariff No. 14.....	1.73	1.16
155.....	Illinois, Distance Tariff No. 10.....	1.70	1.01
160.....	Erie R. R., I. C. C. D-499, Carbondale to Cameron Mills.....	1.79	
161.....	Erie R. R., I. C. C. D-475, Brockwayville, Pa., to Hornell, Pa.....		1.20
155.....	New York Central, I. C. C. 487, distances 151 to 175 miles.....	1.38	
155.....	New York Central, I. C. C. 485, distances 151 to 175 miles.....		1.29
155.....	Lehigh Valley R. R., I. C. C. D-291, distances 151 to 175 miles.....	1.52	1.43
160.....	Lehigh Valley R. R., I. C. C. D-241, Mount Carmel, Pa., to Hornets Ferry.....	1.47	

At the hearing complainant introduced in evidence a contract made in 1900, which is still in effect, between the Northern Pacific Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the St. Paul & Duluth Railroad Company. Before that time or shortly afterwards the stock of the latter company was

acquired by the Northern Pacific, and its railroad has since been operated as a part of the Northern Pacific system. It is provided in this contract, among other things, that the Chicago, Milwaukee & St. Paul shall have trackage rights over the Northern Pacific, including the right to make rates on traffic moving from the head of the lakes to points on the Chicago, Milwaukee & St. Paul. On coal in carloads the contract allows the Northern Pacific as arbitraries from 40 to 60 cents per ton, depending on the length of the haul from St. Paul and Minneapolis; and the evidence shows that the average revenue received by the Northern Pacific on such coal is slightly in excess of 50 cents per ton. The contract also contains numerous provisions with respect to furnishing equipment, division of expenses of maintaining roadbed and equipment, etc., not necessary to be here mentioned.

Complainant relies chiefly upon the amounts received by the Northern Pacific under this contract to establish the charge that defendants rates from the head of the lakes to the Twin Cities are unreasonable. The Commission and the courts have repeatedly held that the divisions of through rates which a carrier accepts as its proportion is not a measure of the reasonableness of its separately established rates. This principle is too well settled to require argument, and we perceive no reason why it should not apply in this case.

There is nothing presented in this record to justify a finding that the rates in question are unreasonable. They certainly compare favorably, all things considered, with coal rates for similar distances in that section and in other sections of the country, and the bituminous rate is the lowest shown in the tariffs of defendants on any traffic between the points named. Neither are we able to find that there is any undue discrimination against the users of anthracite coal. Generally, if not without exception, anthracite coal takes higher rates than bituminous coal. The difference between the two rates in question is not so great as obtains from Chicago to the Twin Cities, or between points in Iowa and Illinois. The same or a greater difference has been maintained on the lines of defendants for many years, and no substantial ground appears for condemning the present adjustment.

The complaint should be dismissed, and it will be so ordered.

No. 1402.

MERCHANTS COTTON PRESS & STORAGE COMPANY ET AL.

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted April 8, 1909. Decided June 24, 1909.

1. Complaint was made against (a) the local rate of the principal defendant of 20 cents per bale on cotton from Memphis to South Memphis, Tenn.; (b) the allowance to a warehouse company of 50 cents per bale for compression of cotton at South Memphis; and (c) the allowance to the warehouse company of 10 cents per bale for switching and transfer to the warehouses of consignees in its plant; *Held*, That complainants' contention relative to the 20-cent local rate was waived upon argument; that the allowances were not shown to be excessive; that they are made to cover the cost of service which the carriers may lawfully perform for themselves or hire others to perform; and that the facts upon which complainants base their contention do not establish the charge of unjust discrimination or disclose any other violation of the act.
2. No violation of the act can be predicated solely upon the fact that a carrier makes with one independent company a contract more favorable than with another for a service which that carrier is bound or undertakes to perform. The act deals only with the obligation of carriers as carriers, and in no way attempts to regulate or interfere with matters not involving their duties to shippers or passengers as such.
3. A violation of the act is not established by merely showing that the owners of a majority of the stock of a corporation, which performs a certain service for a railroad at a compensation involving no more than a reasonable profit, are also shippers of freight; but it goes without saying that neither carriers nor shippers can evade the prohibitions of the law by means of paper organization, nor would the utmost good faith in the matter of incorporation justify a relation which actually works out a violation of the statute. The Commission has never hesitated to look through corporate forms and to examine the substance of transactions.

Metcalf, Minor & Metcalf for Merchants Cotton Press & Storage Company.

King, Spalding & Little for Gulf Compress Company.

C. T. Ladson for Farmers' Educational & Cooperative Union of America, intervener.

Charles N. Burch and *C. L. Silvey* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

T. K. Riddick for Memphis Warehouse Company.

REPORT OF THE COMMISSION.

KNAPP, *Chairman*:

Complaint is made in this case of certain allowances, hereinafter stated, which the defendant carriers make to their codefendant, the Memphis Warehouse Company, for the compression and handling of cotton; and the matters in controversy will appear from the following summary of facts disclosed by the investigation.

The Southern Railway Company was originally made a defendant, but was dismissed at the hearing at the instance of complainants. Also, there was an intervention by the Farmers' Educational & Co-operative Union of America, on whose behalf a brief was subsequently filed, but the allegations in its petition have no bearing upon the issues between the original parties, and no facts were shown in its interest which call for mention in this report.

For many years the city of Memphis has been an important point for the concentration and marketing of cotton, and a large number of persons are there engaged, mostly as factors or brokers, in dealing in that commodity. With few exceptions the warehouses of these dealers, where cotton is stored, assorted, graded, etc., are located in the business section of the city at some distance from the freight houses of the various railways. The failure of consignees in the past to remove cotton promptly from cars and depots resulted in constant congestion of this traffic and led the defendant roads, in order to secure release of their equipment and prevent a large accumulation of cotton at their freight stations, to adopt the plan of making delivery by dray at the warehouses of Memphis consignees, and this has been their practice for the last twenty-five years. This drayage delivery is provided for in the tariffs of these carriers, without extra charge to the shipper on that account, though it may be that the expense incurred has influenced the amount at which the Memphis rate is fixed. At present this drayage service is performed by the Patterson Transfer Company at a contract price of 17½ cents per bale.

Generally speaking, the rates on cotton are any quantity rates, no difference being made between carloads and less than carloads; and these rates in nearly every instance are made on flat or uncompressed cotton, the carriers reserving the right or privilege of compression in transit at their own expense. Practically all cotton which moves any considerable distance is in fact compressed, and usually on the line of the initial carrier. It appears to be the invariable custom of carriers in the lower Mississippi Valley territory to get this compression done by contract or to make an allowance therefor, instead of doing it themselves, and it further appears that the uniform price or allowance in this section is 10 cents per 100 pounds, or 50 cents a bale. Out of these conditions has grown an extensive

business of compressing cotton, and numerous compress plants have been built at various points throughout the region in question, whether cotton markets or otherwise, where large quantities of this article are concentrated for compression or other purposes.

The Merchants Cotton Press & Storage Company, one of the complainants, is the owner of 4 cotton compress plants in the city of Memphis. When this complaint was filed the plants of this company were leased to and operated by its co-complainant, The Gulf Compress Company. The latter company subsequently went into the hands of a receiver, and at the time this case was submitted these plants were operated by the lessor, the Merchants Cotton Press & Storage Company, for the benefit of the Gulf Compress Company. The record does not disclose the reasons for making this lease or the causes of the financial embarrassment of the lessee. Whilst it is shown that little or none of the stock of the lessee company is owned by cotton brokers and dealers in Memphis, it appears to be the fact that the stock of the lessor company is largely if not mainly owned by persons engaged in that business.

Without going into details, it is enough to say that in course of time the facilities for handling cotton at Memphis became seriously inadequate. Although the compress plants above mentioned are claimed to be capable, and perhaps are capable, of meeting the railroad need for compression at that point, their storage capacity and other conveniences required by a cotton market were quite insufficient and could not, as we understand the testimony, be materially increased without prohibitive expense. It was necessary to haul an immense amount of cotton by drays through narrow streets that were often crowded and almost blocked with the volume of this traffic. During the brisk season congestion was frequent and extremely severe, resulting in constant delays, damage to the cotton from exposure to the weather and other causes, and a state of general confusion and discomfort. In short, the business was carried on under conditions which all agree were unsatisfactory and which a number of witnesses describe as intolerable. Various expedients were proposed for relieving this situation. There were numerous meetings, conferences, and negotiations, of which a more or less complete account appears in the record but which call for no special mention in this report. The thing finally done, and evidently with the encouragement if not under the influence of the defendant railways, was to organize, in 1906, the Memphis Warehouse Company and put into execution the plans in pursuance of which it was incorporated.

This company acquired a tract of land at South Memphis, about 2 miles below the southerly line of the city and not far from the tracks of the Illinois Central, and there constructed an extensive

compress and storage plant, with ample and up-to-date facilities and conveniences for handling cotton and carrying on the business incident to a large cotton market. Included in its equipment are several compresses, about 80 compartment warehouses which are leased to cotton dealers, various loading and unloading platforms, and about 6½ miles of internal tracks connecting the compresses and warehouses with each other and with the interchange tracks of the carriers. By means of connecting tracks and an intervening belt line this South Memphis plant can be readily reached for the transportation of cotton thereto or therefrom by all other roads entering the city of Memphis.

It appears that approximately 80 per cent of the stock of the Memphis Warehouse Company is held by brokers and dealers in cotton who have leased warehouses from the company in which or in connection with which they conduct their business, and that many if not most of these dealers formerly had warehouses in Memphis to which cotton was delivered by drays as above stated.

At various dates since the construction of its plant contracts have been made between the warehouse company and the defendant railways which fix their relations in certain particulars. Among other things, provision is made for the compression of cotton at the warehouse company's plant; and the terms and conditions upon which this service will be performed are substantially the same, as we understand the matter, as those contained in a previous contract with the Merchants Cotton Press & Storage Company, which is still in effect. Separate contracts further provide that the warehouse company, in consideration of doing the necessary switching in and about its plant in the delivery of cotton to warehouses and compresses, and the assumption of liability for safety of the cotton while in the compress plant, etc., shall be paid 10 cents for each inbound bale of cotton delivered to it upon which the carriers earn revenue other than a switching charge.

It thus appears that the defendant roads, in addition to providing for compression, undertake to render at South Memphis a service the same as or corresponding to that so long rendered at Memphis proper, viz, the delivery of cotton at the warehouses of the several consignees. At Memphis this delivery is made by drays; at South Memphis it is made by the railway of the warehouse company. At Memphis the arrangement for compression is made with one concern and the arrangement for drayage transfer with a different concern; at South Memphis the arrangement for both compression and transfer is made with the same concern. At Memphis the cost to the carriers of making this warehouse delivery is 17½ cents a bale; at South Memphis the cost is 10 cents a bale.

The rates on cotton to Memphis and to South Memphis are the same in all cases, and the rates from or through these places are also the same. That is to say, cotton can be shipped from any point of origin to any consignee either in Memphis or South Memphis at precisely the same rate, and that rate covers delivery to the warehouse of the consignee, whether in Memphis or South Memphis. No complaint is made of any of these rates.

The Illinois Central makes a local rate on cotton from Memphis to the South Memphis plant of 20 cents a bale. This rate applies on cotton which has been transported to Memphis by rail and there delivered by dray at the warehouse of the consignee for the Memphis rate as above stated, and which the owner may afterwards desire to move to South Memphis. For this independent and additional service the charge just stated is made. We assume that this local rate would also be applied to any cotton brought into Memphis by wagon which is transported to the South Memphis plant. When this local charge is made in the cases named, although paid to and retained by the carrier, it is absorbed by the warehouse company, presumably for business reasons, and therefore does not in fact increase the rate to final destination.

The specific things and the only things complained of in this case are these: (1) The local rate of 20 cents a bale from Memphis to the South Memphis plant, (2) the allowance to the warehouse company of 50 cents a bale for compression, and (3) the allowance to that company of 10 cents a bale for switching and transfer to the warehouses of consignees in its plant.

Objection is made to the local rate of 20 cents a bale on the ground that it is less than the defendant carriers' distance tariff rate and in excess of their switching tariff rate, but whether complainants desired to have this rate increased or reduced was not made altogether clear. Nothing was shown regarding its reasonableness except the comparisons just mentioned. Obviously the Commission has no power to require an increase of this rate, and we are quite unable to see that its reduction, even if it were found excessive, would be of the slightest advantage to complainants. Apparently a lower rate for this local service would rather inure to the benefit of the warehouse company by diminishing the amount which it now undertakes to absorb. However this may be, it is unnecessary to discuss the point, as any contention respecting this charge was virtually waived upon argument, except as it was claimed to indicate a desire on the part of these railways to favor the warehouse company.

In our judgment nothing has been shown in the course of this inquiry to sustain the charge that the allowance to the warehouse company of 50 cents a bale for compression results in any unjust



discrimination against complainants or either of them. It is the same allowance as they receive for the same service. It is the allowance uniformly made for compression in that section of the country. So far as has been made to appear, and there is really no claim to the contrary, every consignee is at full liberty to order his incoming cotton to the compress which he may select, and his choice in that regard is not shown to have been influenced by the defendant carriers in any instance. As between the different plants which compete for this compression business these carriers apparently maintain a neutral attitude and certainly, as it seems, place them on an equal footing so far as any transportation service is concerned. Just how much profit accrues to compress plants under the allowance of 50 cents a bale can not be determined from the record. In the nature of the case it varies with the volume of business, the efficiency of the plant, and the economy with which it is operated. The complainants contend that the actual cost of compression to the warehouse company does not exceed 35 cents a bale, while that company asserts that the actual cost is about 40 cents a bale. No evidence was offered or statement made indicating the cost incurred by complainants in conducting this business. For the purposes of this report it is not deemed necessary to determine the exact cost, since it is sufficient to find, as we do, that compression at 50 cents a bale yields a reasonable profit to the compress plant in good condition and doing a considerable business.

The allowance of 10 cents a bale for handling cotton between the carriers' interchange tracks and the compresses and warehouses of the warehouse company is made, as defendants contend, in order to place cotton dealers who use these warehouses upon a parity with dealers who have warehouses in Memphis, where, as above stated, the carriers have made store-door delivery for the past twenty-five years. The position of the carriers with reference to this allowance is that so long as store-door delivery is provided at Memphis similar delivery can not be lawfully denied at South Memphis; that it would be impracticable for both the railroads and the warehouse company to operate their engines and cars over the tracks in that company's plant; and that therefore the only workable plan for making delivery to the warehouses in South Memphis, and thereby equalizing conditions at Memphis and South Memphis, is to employ the warehouse company to perform this service. With this contention we are inclined to agree; nor does the arrangement seem to be objectionable from any point of view, except on grounds that will presently be considered. It should perhaps be mentioned here that the compensation for this particular service appears to give the warehouse company little or nothing above actual expenses.

Concerning both these allowances, the one for compression and the other for handling the cotton in the South Memphis plant, some further observations may properly be made. We are of the opinion that no violation of the act can be predicated solely upon the fact that a carrier makes with one independent company a contract more favorable than with another for a service which that carrier is bound or undertakes to perform. The act deals only with the obligation of carriers as carriers, and in no way attempts to regulate or interfere with matters not involving their duties to shippers or passengers as such. It has been decided, for example, that the act does not prevent a railroad from leasing all its refrigerator cars from one company, though the latter be a large shipper as well as the lessor of such cars, *Consolidated Forwarding Co. v. S. P. Co.*, 9 I. C. C. Rep., 182; nor require the hauling of a particular make of private car, *Worcester Car Co. v. Pa. R. R. Co.*, 3 I. C. C. Rep., 577; nor prohibit an exclusive contract with a particular stock yards company, *Kentucky Railroad Commission v. L. & N. R. R. Co.*, 10 I. C. C. Rep., 173; *Central Stockyards Co. v. L. & N. R. R. Co.*, 192 U. S., 568; *L. & N. R. R. Co. v. Central Stock Yards Co.*, 212 U. S., 132. Compression is a service which the carrier procures for its own convenience, and when that service is performed in such manner as not to prejudice or prefer a particular shipper or community the act does not limit the freedom of the carrier to make contracts in respect thereto. Of course, if the arrangement made in any case results in undue preference or prejudice to shippers, the Commission has jurisdiction to correct the wrongdoing. *Muskogee Commercial Club v. M., K. & T. Ry. Co.*, 12 I. C. C. Rep., 312. In this connection it is to be noted that neither of the complainants nor the Memphis Warehouse Company is a purchaser, vendor, or shipper of cotton; and it seems clear that no violation of the statute results from a preference, though found to exist, to a corporation engaged solely in the compression of cotton in which it has no interest.

But complainants show, as above stated, that about 80 per cent of the stock of the Memphis Warehouse Company is held by persons who are dealers in cotton, and therefore contend that any profit which accrues to the corporation finds its way into the pockets of cotton shippers, and is in the nature of a rebate; and that, under the decisions in the *Peavy cases* (*In the Matter of Allowances to Elevators*, 10 I. C. C. Rep., 309; 12 I. C. C. Rep., 85; 14 I. C. C. Rep., 315); and *Traffic Bureau, Merchants' Exchange of St. Louis v. C., B. & Q. R. R. Co.*, 14 I. C. C. Rep., 317, the allowances for compression and switching are unlawful to the extent that they exceed the actual cost of the service, in that they are in reality allowances to shippers through the medium of stock ownership in the corporation.

We are unable to reach such a conclusion on the facts appearing in this record. The provision of section 15, which requires that any allowance made to a shipper for furnishing an instrumentality used in connection with the carriage of his property shall be no more than is just and reasonable, obviously does not apply to the present proceeding, for the reason that the Memphis Warehouse Company is not the owner of the cotton which it compresses or stores. If, then, a violation of the act results from contract relations more favorable to the warehouse company than to complainants, assuming that to be the case, it must be because of undue discrimination under section 3. Whether or not the discrimination is undue is a fact to be found, not a matter of law, and in each of the cases cited by complainants, wherein allowances have been disapproved by the Commission, it was found as a fact that the allowances worked out an undue discrimination against certain shippers. In this case no attempt has been made by complainants to show in what way, or to what extent, the actual shippers or owners of cotton have profited on the one hand or been injured on the other by the contracts in question, the proceeding having apparently been instituted upon the theory that a railroad could not lawfully discriminate as between independent compress plants. We are not prepared to accept this view or to hold that a violation of the act is established by merely showing that the owners of a majority of the stock of a corporation, which performs a certain service for a railroad at a compensation involving no more than a reasonable profit, are also shippers of freight.

It goes without saying that neither carriers nor shippers can evade the prohibitions of the law by means of a paper organization, nor would the utmost good faith in the matter of incorporation justify a relation which actually works out a violation of the statute; and the Commission has never hesitated to look through corporate forms and examine the substance of transactions. But a patient and careful review of this voluminous record, including the elaborate arguments of counsel, has failed to disclose any substantial ground for condemning as unlawful the matters of which complaint is made. In the last analysis the only definite or tangible fact which supports complainants' contention is the fact that about four-fifths of the stock of the Memphis Warehouse Company is owned by brokers and dealers in cotton, who carry on the same business and in substantially the same way as do a majority of the stockholders of the Merchants Cotton Press & Storage Company. It is altogether probable that the warehouse company's enterprise will prove fairly remunerative to its stockholders, though up to this time they have received no return in the form of dividends, and there is no assurance that the business will

be permanently successful. This is quite insufficient, in our judgment, to warrant a finding of unjust discrimination against the complaining concerns.

In the consideration of this case it is pertinent to remember that the complainants are not shippers and do not appear here in that capacity. The controversy is purely one between competing compress companies. No actual shipper of cotton, whether to, from, or through Memphis, complains as such shipper, either in person or by representation, of anything done by the defendant carriers in connection with the South Memphis plant. So far as appears from anything disclosed or suggested, no dealer at Memphis not interested as a stockholder or otherwise in the Merchants Cotton Press & Storage Company has given support to this complaint by testifying as a witness or otherwise indicating his objection to the arrangements made with the warehouse company. Such a dealer may do less business and make less money than he otherwise would, not because of the allowances under these contracts or any resulting profit to his competitors who may be stockholders in the warehouse company, but solely, if at all, because a considerable part of the cotton trade has gone to South Memphis, where his competitors have better facilities and conveniences for conducting their business. It is equally true, as appears to us, that the Memphis dealers who own stock in the Merchants Cotton Press & Storage Company have not been injured or prejudiced as shippers of cotton, though as stockholders of that concern they have probably suffered more or less from loss of earnings and the diminished value of their property. They have been placed at undue disadvantage in no other respect, so far as we are able to perceive, but this obviously furnishes no valid ground of complaint under the regulating statute.

Our conclusions, of course, are limited to this particular controversy, for each case involving allowances must be determined upon the special facts and circumstances brought to our attention. All we hold is that the allowances or compensation here drawn in question have not been shown to be excessive; that they are made to cover the cost of a service which the carriers may lawfully perform for themselves or hire others to perform; and that the facts upon which complainants base their contention do not establish the charge of unjust discrimination or disclose any other violation of the act.

The complaint should be dismissed and an order entered accordingly.

CLEMENTS, *Commissioner*, dissenting:

While it is true, as stated in the report of the Commission, that the case must be decided upon its own facts, it is equally true

that the "all-embracing prohibitions" of the interstate-commerce act against unjust discriminations, irrespective of the manner by which they are effected, whether directly or indirectly, can not be ignored in any case. The allowance of 10 cents per bale, to the compress at South Memphis for taking the cotton from the carriers on the exchange track and handling it inside the plant, which for the most part belongs to dealers who are shippers, is in my judgment, upon the facts, unlawful. It seems to me utterly repugnant to the principles laid down by the Supreme Court in *Interstate Commerce Commission v. C. & O. Ry. Co.*, 200 U. S., 361, and to the decisions of this Commission in *General Electric Co. v. N. Y. C. & H. R. R. R. Co.*, 14 I. C. C. Rep., 237, and in *Solvay Process Co. v. D., L. & W. R. R. Co.*, 14 I. C. C. Rep., 246; also to the final decision of the Commission in *In the Matter of Allowances to Elevators by the Union Pacific R. R. Co.*, 12 I. C. C. Rep., 85, and in *Traffic Bureau, Merchants' Exchange of St. Louis, v. C., B. & Q. R. R. Co.*, 14 I. C. C. Rep., 317. Reference is also made to the provision in section 15 of the act authorizing the Commission to fix the compensation to be received by the shipper from the carrier for services rendered in connection with the former's shipments. Such allowances are at most permissive. There is no direct positive authority in the statute for employment by the carrier of the shipper to render such services. The provision in section 15 is no more than an implied recognition of the practice, and was inserted in the statute not for the purpose of creating such a right or enlarging it, but for the manifest purpose alone of restricting it and putting limitations upon it to prevent discrimination. To give such effect to this provision that it may cover an allowance which results in unjust discrimination is to ignore the principle laid down in the *Chesapeake & Ohio case*, 200 U. S., 361, wherein it is said by the court:

The all-embracing prohibition against either directly or indirectly charging less than the published rates shows that the purpose of the statute was to make the prohibition applicable to every method of dealing by a carrier by which the forbidden result could be brought about. If the public purpose which the statute was intended to accomplish be borne in mind, its meaning becomes, if possible, clearer. What was that purpose? It was to compel the carrier, as a public agent, to give equal treatment to all.

Again in *Texas & Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, the Supreme Court in effect declared a specific provision of the act purporting to give shippers the right to sue directly in the first instance in the courts for recovery on account of unreasonable rates ineffective for the sole reason that to give it full effect, according to its terms separately considered, would result in unjust discrimination, and in part cause the act to destroy itself, again

17 I. C. C. Rep.

having reference to the fundamental, all-embracing prohibitions of the statute against discrimination "in any respect whatsoever." If, therefore, a definite and specific provision in the act itself must give way in order to give effect to these fundamental requirements, surely the permissive practice covered by the provision of section 15 referred to, which was intended only to limit and restrict the practice, so as to prevent discrimination, can not be given such interpretation as would tend to the defeat of one of the leading purposes of the act, the prohibition of unjust discriminations. For these reasons I can not agree with the majority in dismissing this complaint.

LANE, *Commissioner*, dissenting:

The practice of the defendant carriers by which they include drayage of cotton at Memphis in the rate for rail transportation to that city furnishes the excuse for the allowance of 10 cents per bale for intra-plant switching at South Memphis, which is sanctioned by the majority here. This practice was adopted some twenty-five years ago, prior to the enactment of the act to regulate commerce, prior to the invention of demurrage rules, and prior to the construction of storage warehouses at Memphis situated upon the lines of rail carriers. The practice is a survival from a time when carriers were unregulated and when they were governed by conditions which have wholly ceased.

That this is true is shown by the fact that the St. Louis, Iron Mountain & Southern and the Frisco roads, hauling cotton into Memphis, have abandoned the practice of including transportation outside the act (drayage) with transportation subject to the act and covering both with a single rate. These carriers have voluntarily adopted the modern and lawful method of publishing their rates for rail transportation wholly separate and distinct from the service for drayage.

By sanctioning the allowance for intra-plant switching at South Memphis, the majority of the Commission also inferentially indorses the drayage practice at the city of Memphis, and this without any examination to determine whether or not such drayage practice is legal and proper and without any satisfactory examination to determine whether or not the allowance at South Memphis serves to balance such drayage practice and thus prevent discrimination.

The allowance at South Memphis is justified by the defendant carriers and by the Commission on the ground that it is equivalent to the free delivery given to those receivers of cotton at Memphis whose warehouses are at a distance from the lines of the carriers. This justification wholly ignores the situation of such receivers of cotton at Memphis as have warehouses upon the lines of the carriers. That there are such receivers is shown by the record. What volume

of the cotton hauled into Memphis is delivered by rail to storehouses in that city is not disclosed by the record. Every witness interrogated on the subject answered in general terms, some saying that the great bulk of the cotton was delivered by dray, others saying that the greater percentage was delivered by dray. Another, speaking for a single road, said that practically all the cotton hauled by it was delivered by dray. These witnesses all indicate, however, that some of the cotton received at Memphis is delivered by rail. The decision of the Commission here wholly ignores the situation of these receivers, and allows the payment to their competitors at South Memphis of 10 cents per bale for movement of cotton inside their plant after delivery by the railroad company, while such allowance is withheld from the receivers of cotton at Memphis having warehouses upon the carriers' tracks.

If it be ruled that the allowance to the South Memphis concern is not an allowance to shippers because a corporation has been formed by such shippers to receive the allowances, then violation of the act will become both simple and safe. The South Memphis plant is owned by a corporation. Eighty per cent of the stock of the corporation is owned by factors shipping cotton to and from Memphis. The plant includes a compress and also 80 storage compartments. These storage compartments are rented to the stockholders. The stockholders route their cotton to their own property and the allowance is paid to the corporation owned by them. The record does not tell us whether or not any cotton except that owned by the stockholders passes through the plant. It is clear from the record, however, that the South Memphis concern is really nothing but a cooperative compress owned by shippers and operated by them in connection with their storage warehouses, 20 per cent of the stock of the corporation which they have formed being held by the parties furnishing the land and the parties erecting the buildings. An allowance to such concerns upon shipments routed by the owners thereof is certainly an allowance to such owners.

In such a case as this I do not regard the amount of the income of the corporation receiving the allowance as any indication of the legality of the allowance. If this allowance is unlawful, the fact that it is inadequate to pay a profit upon the entire investment in the plant does not serve to excuse it. In this regard, however, it must be remembered that the stockholders of the company rent their storage compartments from it and receive other services not covered by the allowances received from the railroad for switching and for compression. If the Commission is to ratify this allowance and to attempt to determine its adequacy, it must examine into the relations between the corporation and its members to determine whether or not any

portion of the allowance received from the railroad is being used to defray the expense of furnishing to such members the services other than switching and compression performed by the corporation. That such an inquiry is practically impossible of successful conclusion serves only to show that the relationship between the shippers and carriers which has been devised in this case is confusing and calculated to defeat the main purpose of the act.

Even admitting that the inclusion of drayage for some shippers at Memphis within the rate for transportation to that point furnishes a legal excuse for the compensating allowance to the receivers at South Memphis, we are without any basis of decision that 10 cents per bale is the proper payment to be made at South Memphis. If the drayage at Memphis has anything to do with this allowance, then it is paid by way of equalization to prevent a discrimination; but, to equalize, the allowance must be equal in value to the drayage given at Memphis. What the Memphis receivers get is the delivery of cotton to the doors of their warehouses. To ship this cotton again, they must themselves bear the drayage expense of transporting it to the compresses. The situation at South Memphis is radically different. The warehouse and the compress are a part of the same plant, and the South Memphis receivers therefore get not only delivery to their storage compartments, but delivery to their compress as well, both being included in the one activity. Moreover, many advantages are possessed by the shippers operating at South Memphis not possessed by the shippers operating at Memphis. One such is the matter of insurance, rates being much lower at South Memphis than at Memphis proper. As the South Memphis company says in its answer here, "the possession of all these modern up-to-date improvements has given it many advantages over petitioners" (its competitors in the same business).

The switching performed by the South Memphis establishment is precisely such switching as the Commission in the *General Electric case*, 14 I. C. C. Rep., 237, and in the *Solvay Process case*, 14 I. C. C. Rep., 246, declared to be the shipper's duty to be performed at the shipper's expense.

Viewing the case, therefore, as affording an illustration of a vicious method of rate-making, I wish to record my dissent. If it be urged that the allowance is not an allowance to equalize rates but compensation to the receiver of cotton at South Memphis for switching cars inside its plant, then I would rest my dissent upon the doctrines of the *General Electric* and *Solvay Process cases*, above cited.

In addition to the above I find this difficulty with the decision of the majority in this case. In the case of *Federal Sugar Refining Co. v. D. L. & W. R. R.*, 17 I. C. C. Rep., 40, decided this day, the Commission

was called upon to answer the complaint of a shipper alleging a discrimination far more evident than would exist as between Memphis and South Memphis if the drayage were given at the former place and the allowance at South Memphis discontinued. In that case the Commission refused to interfere, to order the discrimination cured. Even though rate making by allowances be tolerated, it still remains that, tried by the result in that case, the result here is wrong, and tried by the result here the result in that case is wrong, unless carriers have a very broad discretion in granting or withholding these allowances. In the *Federal Sugar Refining Company case* the favored shipper of sugar receives an allowance of 60 cents per ton upon shipments to certain territory and of 85 cents per ton upon shipments to other territory, as the result of an arrangement by which the carriers turn over to this shipper the function of furnishing Brooklyn stations and lighterage facilities for their lines. The complaining shipper asks that he be placed in an equally advantageous situation. The Commission refuses to interfere. In the case here discussed the Commission is asked to order the discontinuance of an allowance given, ostensibly, to cure a precisely equivalent discrimination. The Commission again refuses to interfere. It must follow that if the carriers in the sugar case had made the allowance to the Yonkers shipper the Commission would not interfere, and that if the carriers in the present case had refused the allowance to the South Memphis shipper the Commission would not interfere. That is to say, to an amount equal to 85 cents per ton upon shipments of sugar and to an amount equal to 10 cents per bale upon shipments of cotton, carriers are free to discriminate for or against any shipper. Yet practically every rebate case which has been prosecuted within the last three years has turned upon a smaller discrimination in freight rates.

It conclusively appears from the testimony of railroad officials making rates for the Louisville & Nashville Railroad, for the Rock Island system, and for the Belt Railway at Memphis, that the deliveries made by the Illinois Central Railroad and by the Belt Railway to the interchange tracks at South Memphis are practically the same in cost as the delivery which finally results after the switching covered by the allowance. That is to say, so far as expense to the carriers goes, the cars of cotton delivered to the South Memphis plant and the cars of cotton taken from the South Memphis plant might as well be transported by the carriers to and from the loading platforms as to and from the present interchange tracks. This being so it becomes still more apparent that the intra-plant switching is for the receivers' benefit alone. In fact, this appears from the argument that the carriers could not do this switching because the cars must be placed and delivered to suit shippers' convenience in loading and unloading,

and that consultation of such convenience would cause the carrier's engine to be delayed if it were to undertake the work.

I am convinced that it is an injustice to the railroads of the country to ratify such an allowance as this. The Illinois Central Railroad may gain at this point by being permitted to make an allowance confined to the shippers who are owners of this plant. In its extensive system, however, it will in the long run suffer more from the other allowances which will arise under this decision than it can possibly gain at Memphis. The allowance at Memphis is opposed and discredited by the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Rock Island system, the Cotton Belt, and the St. Louis, Iron Mountain & Southern. It is practically certain that the decision of the majority here will be followed by the making of allowances by these other carriers at Memphis not only to the South Memphis plant but to those receivers of cotton in Memphis who are fortunate enough to own compresses. The same result will follow at other points.

Competition between carriers is in the public interest, whether such competition be in rates or in services, only so long as the offers of rates or services are made to the public generally. The rebating system was never anything but a system of competition between the railways. The offers, however, of reduced rates were made to particular shippers only. I am opposed to competition by means of allowances included in tariffs for the same reason that I am opposed to competition by secret rebating. Both methods produce the same evil discrimination against the shippers who do not receive the lowered rates. The interest of the railways and of the great mass of the shippers is identical here. Lowered rates to one shipper only serve to reduce railroad revenues and at the same time to injure the mass of shippers. Opposition to the system is therefore in the interest of the carriers and of the country as a whole. Only the Commission is strong enough to make such opposition effective, railways being subject as they are to the demands of powerful shippers. I regret to see that the Commission in this case is throwing its influence on the side of the system which to me seems indefensible.

No. 933.

IN RE MILLING-IN-TRANSIT RATES.

Decided June 28, 1909.

The Commission adheres to its former ruling in a proceeding entitled *In the Matter of Through Routes and Through Rates*, 12 I. C. C. Rep., 163, that whenever by any transit arrangement through rates are applied, such through rates must be as of the date of the first movement of the shipment from the point of origin under such through rates.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Transit privileges are allowed by carriers at many points by which commodities milled or merchandised at such points are treated as constructively in course of transportation while in the hands of the owners or millers. The object of this arrangement is to enable the shippers to receive the benefit of the through rates from the point of origin of such commodities to the final point of destination instead of requiring them to pay the rate to the milling or merchandising point, plus the rate from such point; the sum of such rates being generally in excess of the through rate from first point of origin to point of final destination.

Rates frequently change while commodities are in a state of suspended transportation at the transit point. In such case it is necessary to determine whether or not the rate to be applied shall be that of the day of final shipment or that of the day of shipment from the first point of origin.

This question has been heretofore examined by the Commission, and was decided on May 29, 1907, in the proceeding known as *In the Matter of Through Routes and Through Rates*, 12 I. C. C. Rep., 163. In that proceeding, after an examination of the authorities, it was held that the rates to be charged for the transportation are the rates in effect at the time the shipment is first delivered to the carrier. Changes in rates do not affect shipments which are in course of transportation. Shippers delivering commodities to carriers are not subject to changes of rates by the carriers after the carriers take possession of the shipments and issue bills of lading.

Subsequently an administrative ruling covering this point was issued by the Commission in its Conference Rulings Bulletin No. 3, page 31, as follows:

119. Reshipping of grain. Upon inquiry whether a proposed tariff rule providing that "The rate to be applied on all outbound transit grain of record shall be the specific

rate that is lawfully in effect from Chicago at the time the grain is reshipped" may lawfully be incorporated in a tariff; *Held*, That the Commission can not sanction the rule, and that the grain can move only as a through movement on the through rate in effect at the time it starts, or as a local movement.

The Commission is asked by a committee representing the grain and flour interests of various cities on the Ohio River to rescind this ruling and to hold that the through rates as of the date of the second or final movement of the commodities may be applied to shipments which are the subject of transit regulation. The argument made is thoughtful and has received full consideration. Some difficulties following the Commission's ruling are indicated by the committee. These difficulties, however, appear to be incidental to the transit practice rather than to the ruling which the Commission has made. Equally great difficulties of the same general nature, it can plainly be seen, would follow the ruling requested by the committee.

The committee says that upon delivery of shipments at the transit point it remains to the receiver to determine whether or not the shipments shall be a through shipment, its language being:

If sold locally, no milling-in-transit feature is involved. If sold for delivery at some other point and then tendered the carrier for shipment to said other point, it *then* becomes a through shipment of product and can not become so earlier. Therefore the through product rate in effect on the day of its shipment from the mill should be applied, because on that day, and not sooner, has it become a through shipment to its final destination.

To accept this argument of the committee would be to condemn the entire transit arrangement and to hold that the rates should be the local rates to and from the transit point. Why should there be a "milling-in-transit" point if there is not through transportation? And if there is through transportation, the through rate from point of origin must apply. "Transit" implies a through movement.

The Commission is unable to accept or countenance the theory of suspended transportation, with its result of the application of the through rate for commodities which have been milled or merchandised, without applying to the situation thus created the rule of law that rates can not be changed while shipments are in course of transportation. The Commission can not say that shipments are theoretically in course of transportation in order that the through rate may be applied, and actually not in course of transportation in order that changed rates may be applied.

The Commission adheres to its former ruling that whenever by any transit arrangement through rates are applied, such through rates must be as of the date of the first movement of the shipment from the point of origin under such through rates.

No. 2016.
BOISE COMMERCIAL CLUB
v.
ADAMS EXPRESS COMPANY ET AL.

Submitted June 21, 1909. Decided June 29, 1909.

On complaint attacking reasonableness of express rates from New York City to Boise and other points in southern Idaho; *Held*, (1) That carriers may not lawfully make a difference in rates based upon the time of payment of charges; (2) That the through rates at present in effect in almost every instance violate the general principle that a through rate shall not exceed the lowest combination of locals between the same points. Defendants required to present to Commission on or before October 1, 1909, a new basis of rates for the carriage of small packages from New York to Boise and points similarly situated.

Reilly Atkinson for complainant.

T. B. Harrison, jr., for Adams Express Company, United States Express Company, and American Express Company.

C. W. Stockton for Pacific Express Company and Wells Fargo & Company.

Alexander & Green for Wells Fargo & Company.

James L. Minnis for Pacific Express Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Boise is a local station in southwestern Idaho on a branch of the Oregon Short Line Railroad, 20 miles from Nampa, the junction point of the main and branch lines. The complaint is directed against express rates from New York City to Boise and other southern Idaho points, not named, on packages weighing from 8 to 47 pounds, and comparison is made with the rates to Reno, Nev., a local station on the main line of the Southern Pacific Company, and Portland, Oreg., a terminal Pacific coast city for several transcontinental railroads.

Boise is served by the Pacific Express Company alone. The other defendants originate business in the city of New York and deliver

it at either Omaha, Kansas City, Denver, or Ogden, to the Pacific Express.

The charge per 100 pounds from New York to Reno and Portland is \$13.50; to Boise \$12.50. These rates are applied according to weight on packages in excess of 50 pounds. The defendants have what is termed a graduate or minimum scale of charges for packages weighing less than 50 pounds, the application of which results in higher rates per pound than if figured on the basis of the rate per 100 pounds. The rules and regulations in the express tariffs and classifications providing for these charges are the following:

American Express Company's joint basing transfer tariff, I. C. C. No. 53, contains the following rules:

Governed by Official Classification No. 18, Airy's I. C. C. OEC No. 1.

This tariff must be used to figure the through charge on shipments destined to offices of connecting concurring express companies for which through rates have not been furnished.

Except as otherwise authorized in the classification, graduate once on the rate of this company to the basing transfer point, and again on the connecting company's rate from basing transfer point to destination.

The classification referred to contains the following rules:

15. When shipments pass over the lines of two or more companies, and the shipping or destination point is an exclusive office, each company's charge must be assessed separately and not on the through rate made by combining the locals, unless otherwise specifically provided.

6 (a) Graduated charges apply to matter weighing less than 100 pounds when the rate is under \$2 per 100 pounds and to matter weighing less than 50 pounds when the rate is \$2 or more per 100 pounds.

6 (b) Shipments exceeding 7 pounds carried by more than one company, charge separately for each company, except that between points where a single graduate is authorized, the charge will be the same as if carried through by one company.

When either the point of origin or of destination is an exclusive office of one express company, but the service between the two points is conducted by two companies, the double-graduate rule applies, resulting in much higher charges than would accrue under the single graduate. When the point of origin and destination are reached by the same company, the single graduate applies. Similarly, when more than one express company operate between points of origin and destination, the single graduate is used. In conformity with these rules, Boise, being an exclusive station of the Pacific Express Company, is charged double-graduate rates from New York because the Pacific Express Company does not operate from that city.

On packages weighing from 1 to 7 pounds this double graduate is not applied, as the competition of the United States Post-Office Department is met by applying the single graduate. As to these there is no complaint.

The table below shows the charges between New York City and Boise on packages weighing from 1 to 50 pounds. Columns 1 to 4 show how the rate is determined under the double-graduate rule, the total appearing in column 4; the fifth column shows what the rate would be were it figured on a single graduate, and the sixth column is the prepay rate of 1 cent per ounce applied on merchandise generally.

New York to Boise, 2 graduates (New York to Omaha, \$4.50; Omaha to Boise, \$8).				Charges under single graduate.	Section E. Rates, 1 cent for 1 ounce, prepaid.
Packages not over—	\$4.50 per 100 pounds.	\$8 per 100 pounds.	Total charge.		
<i>Pounds.</i>					
1	\$0.30	\$0.30	\$0.60	\$0.30	\$0.16
2	.35	.35	.70	.35	.32
3	.45	.45	.90	.45	.48
4	.60	.60	1.20	.60	.64
5	.75	.80	1.55	.80	.80
6		.90	1.80	.90	.96
7		1.00	1.90	1.00	1.12
8	.90	1.20	2.10	1.20	1.28
9		1.25	2.15	1.35	1.44
10	1.00	1.25	2.25	1.40	1.60
11		1.50	2.65	1.60	1.76
12		1.50	2.65	1.75	1.92
13	1.15	1.50	2.65	1.85	2.08
14		1.50	2.65	2.00	2.24
15		1.60	2.75	2.15	2.40
16		1.85	3.15	2.30	2.56
17		1.95	3.25	2.40	2.72
18	1.30	2.00	3.30	2.60	2.88
19		2.00	3.30	2.75	3.04
20		2.00	3.30	2.75	3.20
21		2.25	3.75	3.00	3.36
22		2.25	3.75	3.10	3.52
23	1.50	2.25	3.75	3.20	3.68
24		2.25	3.75	3.35	.....
25		2.25	3.75	3.50	.....
26		2.50	4.20	3.65	.....
27		2.60	4.30	3.75	.....
28	1.70	2.70	4.40	3.95	.....
29		2.75	4.45	4.00	.....
30		2.75	4.45	4.00	.....
31		3.00	4.90	4.25	.....
32		3.10	5.00	4.35	.....
33	1.90	3.20	5.10	4.45	.....
34		3.25	5.15	4.60	.....
35		3.25	5.15	4.75	.....
36		3.50	5.50	4.90	.....
37		3.50	5.50	5.00	.....
38	2.00	3.50	5.50	5.20	.....
39		3.50	5.50	5.25	.....
40		3.50	5.50	5.25	.....
41		3.75	6.00	5.50	.....
42		3.85	6.10	5.60	.....
43	2.25	3.95	6.20	5.70	.....
44		4.00	6.25	5.75	.....
45		4.00	6.25	5.85	.....
46		4.00	6.25	6.10	.....
47		4.00	6.25	6.20	.....
48	2.25	4.00	6.25	6.25	.....
49		4.00	6.25	6.25	.....
50		4.00	6.25	6.25	.....

Complainant asks that the base rate of \$12.50 per 100 pounds be reduced to \$11, but the evidence does not sustain the allegation that the present rate is unreasonable. As the rates under the double graduate for packages weighing in excess of 47 pounds are not higher

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than under the single graduate, we have to consider only the reasonableness of the charges on packages weighing in excess of 7 pounds and less than 48.

The application of the single graduate to an 8-pound package rate between New York and Boise would yield a charge of \$1.20, or 15 cents per pound. The actual charge made by the application of the double graduate is \$2.20, or 27½ cents per pound—\$1 from New York to Omaha and \$1.20 from Omaha to Boise.

As appears from the table contrasting the charges accruing under the single and double graduates, there is a more marked disparity between rates on small packages than between rates on large packages, the spread being widest as to 8 pounds. In the figures hereafter presented we have used the 8-pound package as illustrative of the conditions arising under the express tariffs. Illustrations as to packages weighing from 9 to 47 pounds would not reveal such a striking difference.

The tariff shows the following rates on 8-pound packages: Buffalo to Boise, 2,437 miles, \$1.20. Corfu, N. Y., 22 miles east of Buffalo, to Boise, 2,459 miles, \$2.20. The rate from Euclid, Ohio, to Boise, 2,306 miles, is \$2.20; from Cleveland, 2,295 miles, \$1.20, and from North Eaton, Ohio, 2,274 miles, \$2.10.

From Batavia, N. Y., to Salt Lake City, 2,177 miles, \$1.20; from Corfu, N. Y., to Salt Lake City, 2,163 miles, \$2.15.

Batavia, N. Y., to Pendleton, Oreg., 2,708 miles, \$1.20; Corfu, N. Y., to Pendleton, Oreg., 2,694 miles, \$2.20.

Toledo, Ohio, to Salt Lake City, 1,837 miles, \$1.20; Holland, Ohio to Salt Lake City, 1,827 miles, \$2.05.

Toledo, Ohio, to Pendleton, Oreg., 2,368 miles, \$1.20; Holland, Ohio, to Pendleton, Oreg., 2,358 miles, \$2.10.

Cleveland, Ohio, to Salt Lake City, 1,999 miles, \$1.20; North Eaton, Ohio, to Salt Lake City, 1,978 miles, \$2.05.

Cleveland, Ohio, to Pendleton, Oreg., 2,530 miles, \$1.20; North Eaton, Ohio, to Pendleton, Oreg., 2,509 miles, \$2.10.

In these last six illustrations a greater charge is made for the shorter than for the longer haul over the same line in the same direction. In each case the express package from the longer-distance point passes at a lower rate through the shorter-distance point. This is brought about by the rule that where a point is exclusive and two carriers participate in the service the double graduate applies.

A further examination of these tariffs shows that the general principle that a through rate shall not exceed the combination of locals is almost universally violated in the making of express rates under the double-graduate rule. This is illustrated by the following table:

Combination rates on an 8-pound package of merchandise between New York City and Boise, Idaho, figured on various junction points.

THROUGH CHARGE.

Collect..... \$2.20
 Prepay..... 1.28

COMBINATION OF LOCALS.

Junction point.	To junction.	Beyond.	Total.
St. Louis, Mo.....	\$0.80	\$1.20	\$2.00
Defiance, Ohio.....	.75	1.20	1.95
Toledo, Ohio.....	.70	1.20	1.90
Pittsburg, Pa.....	.65	1.20	1.75
Buffalo, N. Y.....	.60	1.20	1.70
Detroit, Mich.....	.70	1.20	1.90
Chicago, Ill.....	.75	1.20	1.95

If the consignor in New York City prepays his 8-pound package carried to Boise, he is charged \$1.28; if he sends it collect, he is charged \$2.20. If he ships it locally to Buffalo via any of the express companies doing business between those cities, the total charge to Boise would be \$1.70; and if he ships it to the other junction points named in the table, he could secure other rates varying from \$1.75 to \$2. These various combinations are based on the double-graduate charge.

The number of combinations could be multiplied almost indefinitely by selecting junction points other than those named in the table.

This condition of rate making is unknown in the railroad freight business. Rule 70 of the administrative rulings of the Commission, applicable to freight generally, provides that in the absence of specific through routing by the shipper it is the duty of the agent of the carrier to route the shipment via the cheapest reasonable route known. Hundreds of complaints have been filed with the Commission, alleging that the carrier failed to route the shipment via the route making the lowest combination. Following this rule, the Commission has almost universally granted reparation for the difference between the amount actually charged and that which would have been charged had the lowest combination been applied. Unless this well-established rule is to be set at naught, the Commission must hold that the lowest combination of rates through any reasonable junction must be the maximum charge for the through haul.

The defense offered for the application of the double graduate is twofold: First, that it has been in force for many years; second, that by reason of the fact that the package is transferred from one company to another such additional expense is incurred as to justify the higher charge.

No matter how long a practice has been in effect, it may be challenged. Remedial statutes, such as the interstate-commerce law, are generally enacted because of abuses of long standing.

As to the second defense, it is to be borne in mind that no matter how many transfers from car to car or from railroad to railroad or from the messenger of one car to the messenger of another car may be made, so long as one express company handles the package the single graduate applies. Similarly, if the package is handled by two express companies, the points of origin and of destination being reached by other express companies, the single graduate applies. The double graduate is applied only when either the point of origin or of destination is exclusive to one company and the shipment is handled by two companies.

The evidence discloses no material difference between the cost of transferring from one express company to another and the service rendered in transferring from one car to another or from one messenger to another messenger of the same company.

If an 8-pound package is delivered to the Pacific Express Company at Buffalo for delivery to a consignee in Boise, that package is probably transferred from one express car to another express car and from one railroad to another railroad, and possibly from one railroad station in Chicago to another railroad station in the same city; may be again transferred at Omaha, and again at Nampa; and yet the single graduate applies, and the rate would be \$1.20. If an 8-pound package is delivered to the American Express Company in Batavia, 36 miles east of Buffalo, destined to a consignee in Boise, that package may be transferred from car to car by the American Express Company in Chicago and delivered in Omaha to the Pacific Express Company. On this package the double graduate is applied, and the rate would be \$2.20.

The only difference between the service on these two packages is that incident to the transfer at the junction point from one company to another, and that difference is almost entirely a matter of auditing and bookkeeping. It seems that when express matter is transferred between messengers of the same company at junction points, no new bills of lading are issued, the through billing from the point of origin being used to destination, while a new bill of lading is made when another express company receives the package. Defendants also claim that it requires two sets of employees when the transfer is from one company to another, one set taking the packages from the express car coming in and the other set receiving such packages; further, in some cases there is an extra wagon service at the junction point in the delivery to the receiving express company. Such wagon service, however, may very well be incident to a transfer from one railroad depot to another railroad depot, even where the *same* express company operates over both lines. In this particular case, business from New York to Boise is transferred either at Omaha, Kansas City, Denver, or Ogden; and in all the cities except Omaha the transfer is made in a union station and the wagon service can play no part.

While the defendants justify the double-graduate rule on the plea of additional expense of transfer at the junction point, in its practical application the charge amounts to \$1 extra for transferring an 8-pound package in Omaha and 25 cents for transferring a 25-pound package, those amounts representing the difference between the single and double graduate charges accruing on 8 and 25 pound packages.

It is to be noted that on packages of merchandise weighing from 8 to 23 pounds, the express companies publish what they term a "prepay rate," substantially less than what they term the "collect rate." This is the rate quoted under section E of their classification of 1 cent for each ounce. Under this rate, if the charge is prepaid at New York, an 8-pound package may be shipped to Boise for \$1.28, while the charge, if paid at destination in Boise, is \$2.20, making a difference of 92 cents or 72 per cent.

It is fundamental that there can be but one lawful rate between two points and the law takes no cognizance whatever of the distinction made by the express companies between prepaid and collect shipments. It is a carrier's right as a public-service corporation to demand prepayment on all shipments and it may not distinguish between persons who pay in advance and those who do not. The carrier may waive its right to demand prepayment and accept a shipment with the understanding that it will collect the charges upon delivery to consignee; but if it does not collect such charges from the consignee it must look to the consignor for payment. The collection of the lawful rate is a duty imposed on the carrier by law, and it is given a lien upon the property transported to enforce the payment of charges. To accept a shipment without prepayment is no more than to extend credit to the consignor, and this within reasonable and nondiscriminatory limits it may do. But neither a railroad, an express company, nor other public carrier, may lawfully make rates based upon the waiver of its right to collect charges at the time it receives a shipment. For if there is any risk in the carrying of the shipment without payment of charges the carrier must in fulfillment of its own duty under the law resolve that risk against the consignor and collect in advance. Rates may not be based on a temporary waiver of a carrier's right nor may the reasonableness of a rate turn upon the assumption that some will pay the lawful charges and others will not, so long as the law gives the right to collect the rate in advance and demands that the carrier shall without fail collect its published charges. There being, apparently, two rates from New York to Boise on packages of less than 24 pounds, the shipper is justified in demanding the lower of the two rates and the carrier may not legally demand or collect more. This Commission is likewise justified in holding that such lower rate is reasonable, or at least not unreasonably low, because it is the voluntary rate of the carrier.

It is apparent from what has been said, and illustrations of a similar character might be given as to all exclusive express stations, certainly in the far west if not throughout the whole country, that these express tariffs violate the commonest rules by which the reasonableness of rates may be determined. If the Pacific Express Company were to-morrow to make a contract with a rail line from Buffalo to New York the rate to Boise on an 8-pound package would automatically be reduced to \$1.20. If the same company were to lose its contract over any portion of the route from Buffalo west, its rate from Buffalo to Boise would by force of its own rule be increased. In short, the rates are fixed by agreement between the carriers that where two carriers have offices certain rates shall apply, and where but one carrier has an office other rates shall apply. This is not the recognition of competition, but an agreement on both sides to concede that competition might have a certain result and accept that as fixed to all points on all railroads throughout the country. Furthermore, we have a variation in the through rate amounting to 30 per cent or more, depending on the junction point upon which the rate is based, and irrespective of the number of lower combinations that may be made. Further confusion is added by the presence of the 16-cent-per-pound or 1-cent-per-ounce prepay rate.

We are unwilling at this time to order a reduction of the rates to Boise and thereby in effect condemn the application of the double-graduate rule when the haul is over the line of two express companies. But it is none the less evident that such rule as is at present applied upon through shipments to Boise and similar points leads to results which have been condemned by this Commission from its institution. The carriers themselves must recognize this chaotic condition. It exists no doubt because these companies have but recently come within the purview of the act to regulate commerce. A system must be developed by which express rates (rates applicable to an expedited railroad service, plus additional terminal services) shall conform to the standards to which the railroads have in great measure conformed and which the law enjoins.

We therefore will make no order in this case at this time, but will call upon the carriers involved to present to the Commission in writing, on or before October 1 next, a new basis of rates to be used for the carriage of small packages to Boise and points similarly situated. Such basis should not, in our opinion, affect the creation of rates which will be higher than can be made by combination through the nearest junction point of the two carriers, and must recognize the rule that but one rate can be in effect between the same points on the same class of traffic without respect to the time of the payment of charges.

No. 2051.

F. M. TURNBULL COMPANY

v.

ERIE RAILROAD COMPANY.

Submitted June 3, 1909. Decided June 24, 1909.

Upon the facts disclosed by the record in this case, the track-storage charges of defendant applied to complainant's shipments of oats and the free time allowance governing the same, not found unreasonable. Reparation denied.

H. W. Taylor for complainant.

H. A. Taylor for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This proceeding is brought by F. M. Turnbull Company, a corporation engaged in the wholesale grain business in the city of New York. Complainant ships grain from points in the west directly to the defendant's yards at Twenty-eighth street, Manhattan Borough, and in this proceeding contends that the track-storage charges of the defendant applicable to hay, established by the Commission in the case of *New York Hay Exchange Asso. v. Pa. R. R. Co.*, 14 I. C. C. Rep., 178, are unjust and unreasonable when applied to the shipment of oats. An award of reparation is asked. In conformity to the order issued in the case referred to the defendant lowered its track-storage charges to the following basis:

For first forty-eight hours after car is placed on team track for delivery (time to be computed from first 7 a. m. after car is placed), no charge will be made.

For the next succeeding two days the charge will be \$1 per car per day or fraction thereof.

For each succeeding day the charge will be \$2 per car per day or fraction thereof.

Charges not higher than those applicable to hay were required to be kept in force until January 1, 1909; but the defendant has maintained them since that time, both as to hay and oats.

The lawfulness of reasonable track-storage charges having been sustained, the only question now before us is whether the charges and rules applied to shipments of hay are reasonable as applied to
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shipments of oats. Complainant contends that it is unreasonable to apply the same charges to both commodities, because of the difference in the method of handling them. The case in which these charges were found reasonable involved the hay traffic only. Hay is shipped in bales and oats in bulk, the former being sold after and the latter before arrival at the delivery track. Oats are bagged and weighed in the car after arrival. A car averages 606 bags and each bag is weighed separately. Complainant sells in carload lots to jobbers, who in turn sell to consumers in carload and less-than-carload lots. The unloading is performed by complainant and the trucking to consumers by the jobbers. Complainant takes on the average about three days to unload cars, this depending entirely upon the number of trucks operated by the jobber and upon the distance the oats have to be carted. Under the most favorable conditions a carload of oats can be unloaded in six hours. The jobber is given three days to load and cart away the oats and after that time, it is asserted, he is charged with car service by the defendant at the rate of \$1 per day. While complainant performs the unloading service, nevertheless it is paid for by the jobber.

Sellers of track-storage grain compete with elevators from which grain can be taken without track-storage charges being assessed. It is alleged, however, that better grain can be purchased from the track than from the elevator on account of the mixture of the grain in the elevator. As before stated, the time it takes to unload a car of oats is governed largely by the number of trucks employed, and the jobber, rather than the actual shipper, uses the car as a warehouse. Complainant gives the jobber seventy-two hours to take the oats away, while the carrier gives complainant only forty-eight hours, and complainant contends that if he charges the jobber anything for track storage it tends to divert his business to the elevator.

One of the principal reasons urged by the hay dealers in charging that the track-storage charges were unreasonable was that they billed their shipments "lighterage free" (which means that shipments are billed to the New Jersey terminals and there reconsigned to whatever yards desired in Manhattan Borough), and that they were compelled to consume some of the free time at the Jersey City terminal. As above indicated, complainant ships almost entirely direct to the yards of the defendant at Twenty-eighth street, and the oats are sold before they arrive at that destination.

In partial support of the claim for reparation some evidence as to the "bunching" of cars by defendant was submitted; but, whatever may be the authority of the Commission with respect to damages from such cause, we do not find facts in reference thereto in this record that would justify an award of damages on that account.

Reverting to the main question—that of the reasonableness of these charges as applied to shipments of oats and the rules governing the same—we must keep in mind that cars are primarily for transportation and not for storage or warehouse purposes, and that the public as well as the carriers are vitally interested in the prompt release of cars. We do not find that the charges complained of or the rules governing the same are unreasonable, and it follows that reparation must be denied and the complaint dismissed. It will be so ordered.

No. 1977.

CARSTENS PACKING COMPANY

v.

OREGON RAILROAD & NAVIGATION COMPANY ET AL.

Submitted May 25, 1909. Decided June 22, 1909.

Under the circumstances of this case defendant Northern Pacific Railway Company ordered to make reparation to complainant for excess freight charges collected on 10 carloads of cattle transported from Baker City, Oreg., to Tacoma, Wash., on account of change of route caused by washouts; but feeding charges collected not found excessive.

J. E. Belcher for complainant.

W. A. Robbins, W. W. Cotton, and F. C. Dillard for Oregon Railroad & Navigation Company.

J. W. Quick and George T. Reid for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

On November 13, 1906, complainant shipped 10 carloads of cattle over defendants' lines from Baker City, Oreg., to Tacoma, Wash., routing the same over the line of the Oregon Railroad & Navigation Company from Baker City to Wallula, Wash., and thence to Tacoma via the Northern Pacific. The published rate for their transportation by the route specified was \$104.40 per car. The shipment was
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carried by the Oregon Railroad & Navigation Company to Wallula and thence by the Northern Pacific. When Pasco, Wash., was reached, it was found that serious washouts had occurred between that point and Tacoma and it was impossible to transport the cattle over that route. The shipment was then hauled back to Wallula and again turned over to the Oregon Railroad & Navigation Company for transportation by its line to Portland, with the view of its transportation to Tacoma via the Northern Pacific from that point. When the cattle reached Portland, subsequent to their delivery to the Oregon Railroad & Navigation Company at Wallula, washouts had occurred between Portland and Tacoma on the line of the Northern Pacific, and it was impossible to make prompt delivery. Under ordinary circumstances cattle are transported from Baker City to Tacoma in three days. It required eleven days to deliver the shipment in question. When the cattle finally reached Tacoma, complainant was charged \$1,137 freight and \$302.65 feeding charges.

It is alleged that the freight charges were \$93 in excess of the amount that would have been charged had the shipment moved as routed by complainant and that the feeding bill of \$302.65 is unjust and unreasonable to the extent that it exceeds \$152. Reparation is asked for \$243.65.

At the hearing complainant tendered an amendment to its complaint in which it is alleged that the cattle had shrunken in weight 21 pounds each more than they would have done had complainant been notified of the diversion before it took place. Such notice its manager asserts would have given it opportunity to pasture the cattle at Wallula and save the feeding charges in Portland. We do not think the amendment is allowable, because it presents a claim for damages not directly due to a violation of the act to regulate commerce. Claims of this character are cognizable in the courts and not before the Commission.

In its answer the Northern Pacific admits that it is chargeable with the diversion and expresses willingness to pay the freight charges assessed in excess of those on the basis of the lawful rates by the route specified by the shipper, namely, \$93.

Northern Pacific Railway Company's tariff No. A-3005, provides (Rule 13 under rules and condition):

Care of stock.—The owners of live stock must care for shipment of live stock at their own expense and risk. The expense of caring, feeding, or watering, if advanced by any one of the lines over which the shipments pass, must be paid on delivery at destination by owner or consignee in addition to the contract rate.

The shipment in question moved under the ordinary form of stock contract containing the usual provisions with respect to the liability of the carrier, etc.

It is the contention of complainant that when it routed the cattle over a particular line and causes arose which prevented the carrier from delivering the shipment by that line it was the carrier's duty to have notified it in order that a disposition of the cattle might have been made which would not have entailed extraordinary expense. No proof was submitted at the hearing with respect of the cost of feeding at Portland as severable from the full amount of the charge therefor. The defendant denies liability for any amount on account of feeding.

The defendants insist that the diversion of the shipments was caused by an act of God, that they exercised due diligence in the premises, and are therefore not responsible for extra expense caused thereby for caring and feeding. The case of *Duncan v. A., T. & S. F. Ry. Co.*, 6 I. C. C. Rep., 85, is cited by defendants. In that case the Commission held:

The remedy of a party for injury to goods shipped resulting from delay, detention, loss, breakage, rotting, or other deterioration or damage, not attributable to a violation of any provision of the act to regulate commerce, is by appropriate action in the courts.

The case of *Empire State Cattle Co. v. A., T. & S. F. Ry. Co.*, 210 U. S., 1, is also cited and relied upon. The *Duncan case* expresses the correct principle on the question of reparation for shrinkage of the cattle alleged in the proposed amendment, which is not allowed. Otherwise it is not controlling in this case. Over loss and damage claims not arising from any duty imposed on carriers by the act to regulate commerce, such as destruction of property from accident, loss by stealing or fire, etc., the Commission has never assumed that it had jurisdiction to award reparation. *Blume & Co. v. Wells Fargo & Co.*, 15 I. C. C. Rep., 53.

We do not find that the feeding charges collected from complainant were excessive or otherwise unlawful in view of the facts, circumstances, and conditions disclosed.

It is our conclusion upon the facts shown that the transportation charges collected were unlawful and excessive in so far as they exceeded the rates lawfully in effect by the route over which the shipper routed the freight and that the defendant, the Northern Pacific Railway Company, is alone responsible to the complainant for such excess charges, which we find to be \$93. Complainant is accordingly awarded damages in that sum, with interest, against the said last named defendant. An order will be entered accordingly.

No. 1398.

SAGINAW BOARD OF TRADE ET AL.

v.

GRAND TRUNK RAILWAY COMPANY ET AL.

Submitted January 11, 1909. Decided June 8, 1909.

1. The percentage of the Chicago rates, adopted by defendants as a basis for fixing the rates from Atlantic coast territory to Saginaw, Flint, and other points in the Saginaw Valley, is not found, under the circumstances of the case, to be too high, when compared with the percentages that fix the rates enjoyed by other groups in adjacent territory.
2. The proximity of Detroit and Toledo to the great channels of through transportation and their location on direct through routes where the density of traffic is very great and the general operating and traffic conditions are favorable, are elements that can not be ignored by the rate maker and must necessarily tend to lower rates than can be accorded to communities that are removed from these great streams of traffic.
3. The general foundation upon which rests the whole structure of eastbound and westbound rates in the "percentage-basis" territory described and discussed.

John B. Daish and Frank F. Kleinfeld for complainants.

G. W. Kretzinger for Grand Trunk Railway Company and Central Vermont Railway Company.

O. E. Butterfield for Michigan Central Railroad Company; Boston & Albany Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company, and West Shore Railroad Company.

James H. Campbell for Pennsylvania Company and Pennsylvania Railroad Company.

Charles M. McPherson for Pere Marquette Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The Saginaw Board of Trade, composed of merchants and shippers engaged in business in the city of Saginaw, in the state of Michigan, and organized for the purpose of promoting the growth of that community and the extension and increase of its commerce, has joined in this complaint with the Flint Improvement League, an association performing a like function for the city of Flint, in the same state, with the object of securing reduced rates on all classes of freight and com-

modities between the Atlantic coast territory and the cities of Saginaw and Flint and other points within the counties of Saginaw and Genesee. These counties are hereinafter referred to as the Saginaw Valley and form a part of a rate group known as the 92-per-cent zone. The proceeding was instituted not only in the interest of the members of the two associations, but also on behalf of all receivers and shippers of freight, manufacturers, jobbers, wholesalers, and consumers in the Saginaw Valley. Upon the hearing much testimony was taken before the record was closed; but shortly after the case had been submitted on briefs and while it was under advisement by the Commission, the complainants filed a motion asking that the record be reopened for the taking of further testimony. The motion was granted and the testimony of numerous additional witnesses was thereupon heard. The case was then again submitted on briefs. Its consideration has been delayed by an intimation from the Michigan railroad commission in December last of its purpose to file a complaint praying for a general reduction in rates to and from all points in the lower peninsula of Michigan, including Saginaw and Flint. But as no such petition has been filed we proceed now to dispose of the complaint upon the record before us.

No complaint is made of the inherent reasonableness of the Saginaw Valley rates when considered by themselves. The controversy involves only the relation of those rates with the class and commodity rates of other groups or zones in the same general locality.

The groups whose rates are thus brought into comparison are a part of an extensive rate system originally established in 1877 by the lines serving the territory that lies east of the Mississippi River and north of the Ohio River, now frequently referred to as the percentage basis territory. This territory is practically coterminous with what is known as Central Freight Association territory and embraces Illinois, Indiana, Ohio, and the peninsula of Michigan. It also includes certain ports on Lake Michigan in the state of Wisconsin; it takes in Louisville and the south shore of the Ohio River in northeastern Kentucky; it includes the northwest corner of the state of Pennsylvania, and extends to a portion of the province of Ontario lying just north of Lake Erie and Lake Ontario. Within these boundaries there are about 8,000 railway stations which have been divided or segregated for rate-making purposes into what are called percentage zones. The rates to and from these groups are made up upon a system, commonly called the percentage zone system, that is not in use elsewhere in the United States.

Under the plan first adopted the system embraced only junction or competitive points. The rate from Chicago to New York was taken as the unit or 100 per cent basis, and the rates to Atlantic coast territory were fixed at a percentage of the rate from Chicago to New York, the several junction or competitive points taking rates higher

or lower than the Chicago rate as they were less or more distant from New York, by the shortest route "worked or workable," than was Chicago. This made practically a distance tariff. But after several years of actual experience with it that plan was modified and the rates now in effect were worked out on the following general basis:

From an assumed rate of 25 cents from Chicago to New York there was first deducted the sum of 6 cents to represent the fixed terminal expenses at the points of origin and destination. The remaining 19 cents represented the assumed charge for the rail haul exclusive of any service at either terminal. This rate being divided by 920, that being the accepted short-line mileage from Chicago to New York, yielded a rate per mile of 0.0206 cents for a movement from Chicago to New York under the assumed rate; and this rate per mile was used as the factor for establishing an assumed rate from any particular junction or competitive point on the basis of its mileage to New York. That factor or rate per mile multiplied by the number of miles from the particular point to New York gave an assumed rate for the rail haul from that point exclusive of any terminal service at either end of the movement. To that assumed rate the 6 cents was again added to cover the terminal expenses at the points of origin and destination. The result gave an assumed rate from the particular point to New York, including the terminal charges. And the percentage which this assumed rate bore to the assumed rate of 25 cents from Chicago to New York determined the percentage of the Chicago rate which the particular point would take on any given class of merchandise.

That is the general foundation upon which rests the whole structure of eastbound and westbound rates in the percentage basis territory. The system has no official character—that is to say, its bases have not been filed with the Commission. It was simply a general understanding intended as a guide to rate makers in establishing the specific rates that are published and filed with the Commission and govern traffic between the Atlantic coast territory and points in the territory, the boundaries of which have just been described. In order to avoid the charge that such rates were the result of a concert of action between the carriers serving those territories, it was understood, as we are informed, that the system should be a minimum system of rates and not a maximum system. Theoretically it was also intended to apply only in the construction of rates to and from junction and competitive points. The rates to and from noncompetitive points were made up originally by adding a local or arbitrary rate from such points to some nearby junction or competitive point to which a rate percentage had been assigned. But in the progress of time the system was subjected to gradual modifications resulting in the extension to adjacent noncompetitive points of the rate to or from the junction or competitive point, thus eliminating the addition of the local or arbi-

bitrary rates just mentioned. Moreover, while the system was intended to afford a minimum basis only, as a matter of fact the minimum percentages in the course of time became the maximum rates. The extension to adjacent points of the rates to and from nearby junction and competitive points resulted in the formation of rate zones or groups of arbitrary shape and varying size, in some cases projecting into two states, all points in a particular group taking the same percentage of the Chicago-New York rate on traffic to and from the Atlantic coast territory.

The general nature of the system may be illustrated by reference to one or two representative points. Springfield, in the state of Ohio, for example, is in the 82-per-cent zone. Xenia is the basing point for that group. Its distance to New York at the time this system was established was 700 miles. If, now, we multiply the factor referred to, namely, 0.0206, by 700, we get 14.42 cents; and if to this we add the 6 cents representing the terminal expenses at both ends of the movement, we get 20.42 cents as an assumed rate from Xenia to New York, which is 81.7 per cent of the assumed rate of 25 cents from Chicago to New York; and under the application of a general rule for the disposition of fractions resulting from such computations, a fraction exceeding one-half of 1 per cent is considered a full per cent. A percentage of 82 is thus arrived at as the basis for constructing the rates from that group, and the rates from Springfield are therefore 82 per cent of the Chicago-New York rates. Again, Fort Wayne, in the state of Indiana, is in a 90-per-cent zone. In arriving at that percentage, Muncie was taken as the basing point. The distance from Muncie to Lima via the Lake Erie & Western is 85 miles, and the distance from Lima to New York via the Pennsylvania lines, before they were reconstructed east of Pittsburg, was 713 miles, making a total distance of 798 miles by the shortest route "worked or workable." If the same factor be multiplied by 798 we get an assumed rate from Muncie to New York of 16.44 cents, exclusive of terminal charges. Adding 6 cents to cover those expenses, we arrive at an assumed rate between those points of 22.44 cents, including terminal charges, which is 89.76 per cent of the assumed rate of 25 cents from Chicago to New York. The specific rates from Fort Wayne as published by the trunk lines are therefore made up on the basis of 90 per cent of the Chicago-New York rates, the 0.76 of 1 per cent being taken as a whole per cent.

In building up the system efforts were made to avoid, so far as possible, all infractions of the long and short haul clause of the act. The boundaries of the groups are the lines of railroads, and the point around which each group has been constructed as a basing point is ordinarily the most distant point from New York in the group by the most direct workable route. Water competition and the participation by

north and south lines, such as the Monon, in the traffic between the Atlantic coast territory and the percentage-basis territory, as well as other competitive elements, have naturally had some effect in the shaping of the several zones. New roads have been built and new routes established since the percentages of the several groups were originally assigned, and this in some instances has resulted in material changes in rates. Newly developed traffic and other conditions have also been considered and from time to time have led to alterations in the percentages of some points. Although the effect of these influences on the form and boundaries of the percentage zones is not without interest, it will not be necessary to dwell here upon those features of the system. While it is not always a simple matter when examining a map of the percentage group territory to understand and at once comprehend the causes that have produced zones or groups of such irregular outline, nevertheless a careful study of particular groups, and some knowledge of the transportation conditions that surround and affect them, have given us the general impression that their boundaries have been established upon substantial and presumably sound grounds. The fact that no group rates in this country have been subjected to less criticism than the rates to and from the percentage-basis territory and the Atlantic coast is some evidence of the care with which the system has been developed. So far as a cursory examination of the records of the Commission has disclosed, there have been, until this petition was filed, but three other formal proceedings since the organization of the Commission in 1887, in which complaint was made of the percentage assigned to a particular group. *Detroit Board of Trade v. Grand Trunk Ry. of Canada*, 2 I. C. C. Rep., 315; *Pratt Lumber Co. v. C., I. & L. Ry. Co.*, 10 I. C. C. Rep., 29; *Green Bay Business Men's Association v. L. S. & M. S. Ry. Co.*, 15 I. C. C. Rep., 59. Moreover, the enormous commerce that proceeds to and from Central Freight Association territory has not only adjusted itself to this system of rates, but shippers engaged in that commerce have thoroughly understood it for a score and more of years. While traffic and transportation conditions will doubtless change from time to time and thus necessitate alterations in the zone boundaries, such modifications must necessarily be made with deliberation and only upon adequate grounds.

As heretofore stated, the complainants make no attack upon the reasonableness, in and of themselves, of the rates now offered by the defendants to the shippers, merchants, and manufacturers of Saginaw Valley. The claim is simply that the percentage adopted by the defendant carriers to fix the rates for Saginaw Valley is too high when compared with the percentage that fixes the rates enjoyed by other groups relatively located and where the conditions of traffic and transportation, as the complainants allege, are substantially similar. The

comparison upon which the alleged discrimination is based is made more particularly with the Toledo-Detroit group or zone. The Saginaw Valley group, as stated, takes rates that are 92 per cent of the Chicago rates. Toledo and Detroit are in a 78-per-cent zone. The result, at the time of the first hearing of the complaint, was a relation of rates between the two groups that enabled the jobbers and wholesalers of Toledo and Detroit to distribute their merchandise at many points in northern and western Michigan at a slightly less cost for transportation than it costs the jobbers and wholesalers of Saginaw Valley. The more favorable percentage rates into Detroit and Toledo and the adjustment of the local rates out gave this advantage to Detroit and Toledo merchants.

These differences in the aggregate through charges to points of consumption, when in favor of Detroit and Toledo, had to be absorbed by the jobbers and merchants of Saginaw Valley, at the time the complaint was filed, in order to enable them to compete with the jobbers of Toledo and Detroit in that part of the state of Michigan which the complainants regard as tributary to the distributing points of Saginaw Valley. But after the first hearing, as we were assured at the second hearing, these inequalities were corrected by the Pere Marquette Railroad by a readjustment of its local rates out of Saginaw Valley in such manner as to enable the wholesale merchants of Saginaw now to distribute their wares to points in northern and western Michigan at an aggregate cost for the entire transportation from eastern territory that is no longer in excess of the total cost of transportation paid by the wholesale merchants of Detroit in order to reach the same destinations. The sum of the local rates from eastern points to the western points in question is now the same, as we are told, whether based on Saginaw or on Detroit. Assuming the accuracy of these statements and also of the statement that the Grand Trunk local rates were never out of alignment in that regard, much of the substance of the grievance alleged by the complainants has already been removed. But counsel for the complainants denies that the corrections have been made as stated, and cites Lansing as an instance where the sum of the local rates via Saginaw is still higher than the sum of the local rates based on Detroit. We do not see, however, that Lansing may fairly be regarded as tributary to Saginaw; and as we are referred to no other instance of inequality the statement that a readjustment has been effected must be taken as well founded.

There remains for examination the allegation that the percentage assigned to the Saginaw Valley group is too high when compared with the percentages assigned to other groups in adjacent territory. In this connection the complainants contend that, inasmuch as Saginaw Valley is situated between the eighty-third and eighty-fifth meridians, the Saginaw rates should be on a relatively equal percentage with all

other points between those meridians, including Detroit and Toledo and points in southeastern Michigan and western Ohio. The percentage system, however, was not based on longitude, and we need not stop to consider the reasonableness of the Saginaw Valley rates from a point of view that attaches no significance to transportation or traffic conditions, and concedes no importance to the other factors upon which the system largely rests.

The record does not give us the history of the Saginaw percentage. Our own investigations indicate, however, that no specific percentage was used in connection with Saginaw rates until January 28, 1890, when the westbound rates from New York to that point were equalized with the rates to Chicago by being adjusted on a 100 per cent basis. Apparently the schedules were again revised in 1892, and on May 2 of that year the Saginaw rates were reduced to the present 92 per cent basis. In the meantime, as is to be inferred from the information before us, the rates to and from Flint, which is some distance south of Saginaw and more adjacent to the direct through lines, had already been fixed on this percentage, arrived at on the basis of the mileage by the Flint & Pere Marquette Railroad from Flint to Toledo and thence via the Pennsylvania lines to New York. This route at that time involved a haul of 828 miles, and on the formula heretofore explained gave to Flint rates that were 92 per cent of the Chicago rates. The revision of 1892 resulted in the extension of this percentage to Saginaw. It is our understanding also that at that time the mileage of the Grand Trunk from New York through the Buffalo gateway to the Saginaw Valley was about the same through Port Huron as through Detroit, and involved a haul of 823 miles which, worked out on the formula, would put Saginaw practically on the 92-per-cent basis. Since that time the Grand Trunk, having acquired a number of small Canadian roads, has through that means and by the reconstruction of old lines reduced its distance from Port Huron to Buffalo from 229 to 196 miles, and has otherwise shortened its route to Saginaw through Port Huron. Port Huron is therefore the gateway to Saginaw that now gives the short line over that road. It is interesting, however, in this connection to note that Durand, which is well to the south of Saginaw, was then in the 95-per-cent group and was reduced to a 92-per-cent basis in order that the Grand Trunk might use that route to and from Saginaw without violating the fourth section of the act. Such, as we understand the matter, is the history of the present Saginaw percentage. It is based on the mileage through Toledo and is in substantial accord with the old mileage of the Grand Trunk through Detroit.

But the complainants contend that the short line at this time from New York is not through Toledo, but through the Niagara frontier, and involves a haul to New York of only 731 miles. It is also said

that a large proportion of the Saginaw tonnage takes that route. They insist that Saginaw is therefore entitled to a rate basis of 84 per cent according to the general formula underlying the percentage basis system. Comparing the distance of Saginaw from New York by the Niagara short line with the mileage from Kalamazoo, Detroit, Muskegon, Toledo, Dayton, Cincinnati, Marion, Middlefield, Indianapolis, Connersville, and other important centers in Michigan, Ohio, and Indiana, the complainants insist that Saginaw is entitled to that percentage, and ought to be put on an 82-per-cent basis, when its short-line mileage through the Niagara frontier is compared with the short-line mileage of Detroit and Toledo. That contention, however, is based on a single factor in the situation, namely, the present short-line mileage of Saginaw, and not upon a general view of the whole rate adjustment of which Saginaw forms only a modest part.

The proximity of Toledo, Detroit, and the other communities named in the complainants' comparison, to the great channels of through transportation, their location on direct through routes where the density of traffic is very great and the general operating and traffic conditions are favorable, are elements that can not be ignored by the rate maker and must necessarily tend to lower rates than can be accorded to communities that are removed from these great streams of traffic. The Saginaw Valley lies well to the north of the through lines between Chicago and New York and is more or less remote from the direct current of the great volume of interstate movements between the east and the west. While there is a substantial traffic to Saginaw and Bay City there is comparatively little traffic through and beyond either point. These facts ought to have and necessarily must have a material influence when considering the relation between the Saginaw Valley rates and the other group rates to which the complainants refer. But in demanding an 84-per-cent basis on behalf of Saginaw Valley the complainants have disregarded all such circumstances and have also failed to take into account the effect that such an order as they demand would have on the general rate adjustment in the peninsula of Michigan.

Jackson, which is 769 miles from New York by its shortest line, is in the 92-per-cent zone with Saginaw, yet no complaint as to its rates has been made on its behalf. Nor has any complaint been made by the numerous other points in that zone. If its mileage alone be considered Jackson ought to be on an 87-per-cent basis. Lansing, which is 763 miles from New York by its shortest line, is in the 95-per-cent zone next west of the Saginaw zone. No complaint has been made as to its rates, although the formula, on its exact short-line mileage, would give Lansing rates based on 87 per cent of the Chicago rates. Throughout the 95-per-cent zone, and throughout the 96-per-cent zone

that intervenes before we reach the 100-per-cent Chicago group, are numerous points of more or less importance, and with short-line distances to New York greater than the short-line mileage of Saginaw by from only 30 to 75 miles. And yet no complaint has been made as to their rates. Nothing can be more certain, however, than that a reduction of the Saginaw and Flint rates to an 84-per-cent basis, as demanded, would throw all the peninsula rates into confusion and would be followed at once by demands from all these points for corresponding reductions in their percentages; for an examination of the zone map could not fail to lead the merchants and shippers of these other communities to the conclusion that the present rates are adjusted on a reasonable and a fairly logical relation and that any reduction in the Saginaw rates ought therefore to be followed by a like reduction in their rates. It may be well here again to call attention to the fact heretofore stated that as a rule the extreme point in each zone is used as the basing point for fixing a percentage for the whole zone. As in all group systems there is, therefore, an inequality in rates when distance alone is considered, as between points on one side of a group and the points on the other side. This is particularly true of the 96-per-cent zone to which attention has been called. It is no less true of the 92-per-cent zone in which the Saginaw Valley is located. If, therefore, Saginaw and Flint are to be dealt with separately and on the basis of their own short-line mileage regardless of all other considerations, we shall be forced to deal with each point in other groups separately, and thus lead to the gradual disruption of a rate system which is now quite an old one and, as heretofore stated, has seldom been attacked before the Commission.

There is still left for consideration the alleged discrimination in favor of Detroit and Toledo. When asked at the second hearing whether the percentage upon which the Detroit and Toledo rates are based was the result of water competition the rate experts for the defendants stated that they had not understood that water competition had at any time affected the rates to and from those points. Their view was that such competition was not the explanation of the 78-per-cent basis on which those rates are established. We are strongly inclined to think, however, that in this they were mistaken. There can be no doubt that the location of Detroit upon the St. Clair River, in the very heart of lake navigation, is in part at least the explanation of the growth of that community to its present dimensions and importance. There can be scarcely less doubt of the favorable effect of its water facilities upon the growth and prosperity of Toledo. The history of the percentage now enjoyed by both places shows, as we understand it, that it was the result, if not of actual water competition, at least of a very strong potential competition arising from their location on the lakes. On April 13, 1876, Detroit was on an 85 and Toledo on a

78-per-cent basis. On June 23, 1879, the basis as to both points was made 81½ per cent, which on April 14, 1880, was reduced to 75½ per cent. That, however, was regarded as too low, and on June 1, 1883, both points were put on a 78-per-cent basis, which is still in effect. This level of rates was arrived at, as we are advised, by taking 714 miles as the distance of Toledo from New York, and putting Toledo on an exact mileage basis as compared with Chicago, then, as now, taken for rate-making purposes as 920 miles distant from New York. As a concession, as we understand it, to water competition or to a highly potential water competition, the formula, heretofore referred to as the underlying basis of the system, was departed from in this instance by ignoring the deduction of 6 cents for terminal charges, thus giving to Toledo a relation of rates in exact accordance with its mileage as compared with the Chicago mileage. This resulted in a percentage of 77.6, and following the rule for the disposition of fractions the 78-per-cent basis was arrived at. And in view of the close alliance of the commercial interests of Toledo with those of Detroit that basis was also made effective at Detroit. This relation of rates was questioned by the Board of Trade of Detroit in a proceeding before us against the Grand Trunk and other railroads (2 I. C. C. Rep., 315); but, upon a careful consideration of all the conditions, was sustained.

It has recently been said that more tonnage passes to and from and beyond Detroit in twenty-four hours than enters and leaves all the great Atlantic ports together in the same length of time. In this statement there is more or less exaggeration if it was intended to include the coastwise tonnage with the foreign tonnage of the Atlantic ports; but in any event the traffic passing into and out of the St. Clair River is very large and must necessarily have no little influence on the rail rates to and from Detroit. The same conditions must also affect the rail rates to and from Toledo. Bay City, which is the nearest lake port through which Saginaw may forward and receive traffic by the Great Lakes, is at the extreme end of Saginaw Bay, and to reach that port and return to the regular channel of through lake navigation would require a steamer to diverge probably as much as 150 miles from its course. This disadvantage in location is a burden which, in the very nature of things, the shippers and merchants of Saginaw Valley must always bear. And it would be wholly improper for the Commission to attempt, by any order it might enter, to equalize those conditions with the advantages enjoyed by the merchants of Detroit and Toledo because of the superior location of those two points on the regular line of lake navigation. *Enterprise Mfg. Co. v. Georgia R. R. Co.*, 12 I. C. C. Rep., 451.

Upon the whole record and from a rather extended investigation outside the record, we are led to conclude, now that the distributing rates out of Saginaw Valley have been corrected, that no ground of

complaint is left that justly requires the disturbance of the rates between Saginaw Valley points and the Atlantic coast territory. The record makes it entirely clear that Saginaw as a community is not now suffering and has not suffered materially in the past from an excessive cost for transportation. On the contrary, both Saginaw and Flint during the last ten years have enjoyed a prosperity that has been quite notable. Each of the two cities has grown rapidly both in population and in the number and variety of its industries, and the gross sales of the particular merchants who testified before us have shown a gratifying and healthy yearly increase. While the expense of conducting their business may have been greater during the last three or four years than formerly, this has been due to other causes than the cost of transportation, and has been the experience everywhere in all lines of enterprise during the same period.

For these reasons the complaint must be dismissed. It will be so ordered.

17 I. C. C. Rep.

No. 1735.

SLIGO IRON STORE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted March 24, 1909. Decided June 28, 1909.

1. To avoid the payment of the published through rate on "smithing coal" the complainant falsely billed a carload shipment as "bituminous soft-coal slack" and thus sought to secure the benefit of a lower combination of local rates on soft coal based on an out-of-line point; and in this plan the defendant's agents at Chicago joined; *Held*, That as neither party comes before the Commission with clean hands no relief order will be entered.
2. Compared to the soft coal mined in the west smithing coal is a different commodity with different characteristics and of a different value. Whether it may move under a special smithing coal rate is not here determined; but, *Held*, That there are no grounds shown for disturbing the rates on smithing coal from Chicago, Ill., to Portales, N. Mex.

Carl Hirdler for complainant.*Robert Dunlap, T. J. Norton, and James Peabody* for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This proceeding involves the reasonableness of the defendant's through rate on so-called "smithing coal" from Chicago to Portales, in the territory of New Mexico, and the reasonableness of its local rate to the same point from Pittsburg, in the state of Kansas. The complaint also questions the lawfulness of the distinction made in the rates of the defendant between blacksmith coal and bituminous or soft coal. The following facts seem to have been fully established at the hearing:

To fill an order received from a customer at Portales, the complainant purchased from the Chicago sales agent of a West Virginia mine a carload of blacksmith coal, standing on the tracks of an eastern carrier at Chicago, upon which the local rate from the mine had been paid. Instead of having it forwarded directly to Portales, the complainant requested the mine agent to ship the carload to him at Pittsburg and to bill it not as blacksmith coal but as "bituminous soft coal

slack." After it had been transferred at Chicago into another car, the Santa Fe, on April 15, 1908, issued a bill of lading so describing the coal and naming the complainant as the consignee and Pittsburg as the destination. The mine agent at Chicago prepaid the freight charges for this movement and subsequently collected the amount of the complainant. On the next day the complainant wrote to the local agent of the Santa Fe at Pittsburg, the ostensible destination of the shipment, asking that the coal upon arrival there might be rebilled to Portales. A check was inclosed to cover the charges for the new movement from Pittsburg at a local rate of \$3.85 per ton; but when the car arrived at Pittsburg the agent of the Santa Fe, observing that it contained smithing coal, refused to forward it from that point as a prepaid shipment. He explained to the complainant that the published rate on a local movement of such coal from Pittsburg to Portales was not \$3.85 per ton, but 66-cents per 100 pounds, which is equivalent to \$13.20 per ton. This rate the complainant declined to pay. An exchange of letters ensued but without arriving at any solution of the trouble; and the coal, which had remained at Pittsburg, was finally sold by the Santa Fe as unclaimed freight for \$115.64, or at the rate of \$5.60 per ton. The latter amount happens to be the value of the coal on the tracks at Chicago plus the rate paid by the complainant from Chicago to Pittsburg; and there are some indications in the record that the coal was not actually sold by the defendant, but was converted to its own use at that price. With other relief prayed for in the petition, the complainant demands an order requiring the defendant to pay the proceeds over to it. This we understand the defendant is willing to do.

The rate situation was this: There was in effect at the time of the shipment, as there now is, a specific through rate of \$9.75 per ton on blacksmith coal from Chicago to Portales. From Chicago to Pittsburg there was in effect a commodity rate on coal of $11\frac{1}{2}$ cents per 100 pounds, or \$2.30 per ton. This rate was published in a joint committee tariff, and over all the lines between those points except that of the defendant was applicable on bituminous coal generally. The application of the rate over the defendant's line was restricted, by a note in the tariff, to blacksmith coal; and the result was that on all bituminous coal other than smithing coal the defendant had no applicable rate to Pittsburg except a class rate of 22 cents per 100 pounds, or \$4.40 per ton. Of this fact both the complainant and the defendant were chargeable with notice and seem actually to have been informed. But the car was billed, as heretofore stated, as bituminous coal, although the complainant paid, and the defendant was content at the time to accept, the blacksmith coal rate of \$2.30 per ton. This both parties to the record seem to justify on the ground that it was in fact smithing coal.

From Pittsburg there was a through rate on bituminous coal of \$3.85 per ton to Portales, which, by the express terms of the tariff, did not apply on blacksmith coal. The only available rate for a local movement of blacksmith coal between those points was a combination rate, based on Amarillo, of 66 cents per 100 pounds, or \$13.20 per ton. And it was this rate that was demanded by the defendant's agent at Pittsburg and which the complainant refused to pay.

It will therefore be observed: (a) That there was a through rate of \$9.75 per ton on blacksmith coal from Chicago to Portales; (b) that the sum of the several local rates on blacksmith coal from Chicago to Portales, as they are published in the tariffs of the defendant, was \$15.50 per ton; (c) that there was no through rate from Chicago to Portales on ordinary bituminous coal; and (d) that the local rate on bituminous coal into Pittsburg and the local out made a combination rate of \$8.25. In its complaint the petitioner alleges that the sum of the local rates on bituminous coal into and out of Pittsburg was \$6.15, but it overlooks the fact that the local rate of \$2.30 from Chicago to Pittsburg was expressly restricted in the tariffs of the defendant to smithing coal.

The only inference that may reasonably be drawn from the record is that the complainant, with full knowledge of this rate situation, attempted to avoid the payment of the published through rate on smithing coal by billing the shipment locally into and out of Pittsburg and using the railroad company's employee as its rebilling agent. It had purchased the coal as smithing coal to fill an order for smithing coal; but it falsely billed it as bituminous soft-coal slack, in preparation, as must be assumed, for its plan wrongfully to get the benefit of a local rate on soft coal from Pittsburg to Portales, to which it was not entitled under the published tariffs. Pittsburg is not on the direct through route from Chicago to Portales, over which the through published rate on smithing coal was applicable; but is on a branch line and involves an indirect or back haul of over 100 miles on a through movement to Portales. It may be, therefore, that the complainant was within its strict, technical rights in shipping locally to Pittsburg and then making a new contract for transportation out of that point to Portales. But its course is not one that can be commended and closely approaches practices and devices that have been repeatedly condemned by the Commission. Certainly the false billing of the coal, purchased as smithing coal and to fill an order for coal of that kind, was an effort on the part of the complainant to violate the law both in its letter and in its spirit. The defendant's agents at Chicago were equally reprehensible in falsely billing the shipment as bituminous soft-coal slack and then charging a rate thereon that was not lawfully applicable under its published tariffs.

So far then as the proceeds of the sale of the coal are concerned, neither party comes before us with clean hands and we must therefore decline to enter a relieving order.

In addition to the matter of the disposition of the proceeds of the sale of the complainant's coal there is the issue as to the reasonableness of the defendant's local rate on smithing coal from Pittsburg to Portales. That is obviously a paper rate, for there is no production of such coal in that mining district. The so-called blacksmith coal, mined in West Virginia and in other eastern or southern states, ordinarily could not reach Portales except upon a through shipment from the mine or from a distributing point like Chicago. We do not understand, therefore, how the amount of the local rate on smithing coal from Pittsburg to Portales can be of interest to the complainant or to any other shipper of blacksmith coal except as it may be utilized, as in this case, in order to evade the through rate from a distributing point. We see no occasion, therefore, for considering that rate or for entering any order with respect to it.

There remains to be examined the question of the lawfulness of the distinction made in the defendant's tariffs between blacksmith coal and bituminous or soft coal. The Commission has repeatedly held that a railroad company may not discriminate between its shippers or consignees by making either the character of the consignee or the use to which the commodity is to be put a basis for a difference in the rates charged for its transportation. But the difference in rates here is not based on a mere distinction in the use for which the shipment is intended. While blacksmith coal is a bituminous coal and is of course used by blacksmiths or in forging, it is superior to ordinary coal and is of a distinctly different grade and appearance. While it is possible to use any good bituminous coal for blacksmith purposes, the coal that is known to the trade as "blacksmith" coal is a special quality or grade of soft coal that is capable of producing an intense white heat. The presence of sulphur tends to make the metal brittle, and the best quality of smithing coal contains almost no sulphur and is low in ash. It is of substantially greater value than ordinary bituminous coal. In other words, the rate distinction made in the defendant's tariffs is based on a real difference in the commodities transported. While smithing coal from West Virginia may be used in the east to some extent for domestic purposes, and there is some testimony to that effect in the record, it is recognized in the west as a special quality of coal which railroad agents, or others familiar with coal, are able to distinguish from ordinary bituminous coal because of the difference in its appearance. It is washed or picked over at the mine and is ordinarily sacked at Chicago and shipped to the west and sold in that form in small quantities at many different destinations. We are therefore not warranted, at

least in the record now before us, in finding that the distinction made in the defendant's tariffs is unlawful. It may be well to add that there are many tariffs of eastern carriers on file with the Commission which name different rates on blacksmith and bituminous coal from the same mines. As at present advised, we are not prepared to say that those tariffs are lawful, and that issue is not before us. But the condition is somewhat different as to the western lines. No soft coal moves from Chicago to these western points, while blacksmith coal does move in limited volume as blacksmith coal and for smithing purposes. Compared to the soft coals mined and transported in the west, blacksmith coal is altogether a different commodity, with different characteristics and of different value. We are therefore inclined to think that it may move under a special smithing-coal rate. But it is not necessary on this record finally to determine that question, for, as heretofore stated, the rate on blacksmith coal over the lines of the defendant from Chicago to Portales is lower than the rate on soft coal. It follows that the distinction made in the tariff of this defendant in its rates on smithing coal and soft coal works no disadvantage to the complainant. There is no suggestion of a desire on its part to move soft coal to either of those points, and there seems in fact to be no such movement out of Chicago.

The record gives us no assistance in arriving at definite conclusions as to whether the rate on smithing coal from Chicago to Portales is excessive. When compared with rates on that commodity to other destinations in that general territory, it does not seem to be unreasonably high. The rate, for example, to Roswell, 102 miles beyond Portales, is \$10.75 a ton. If this is a proper rate the Portales rate can not be considered an excessive rate. The rate from Chicago to El Paso is \$5.45, and to Los Angeles and other California terminals is \$8.40 per ton. These rates are doubtless based on an actual or a potential water competition. To Kramer, in the southeastern part of California, and to various destinations in Arizona, rates on smithing coal are found in our tariff files as high as \$17.50 per ton. When compared with the rates on smithing coal from Chicago to other points in New Mexico the rate to Portales seems to be adjusted on a proper basis. To Raton, Las Vegas, Clovis, Albuquerque, and Las Cruces the rates are, respectively, \$8.50, \$9.50, \$9.75, \$10.40, \$9.05. To Prescott and Phoenix in Arizona the rate from Chicago is \$10.70 per ton. As heretofore stated there is a substantial movement of blacksmith coal out of Chicago to various points in the west, and it may fairly be assumed that the rates on which it moves to those destinations have some general relation to one another. From that point of view the rate to Portales has not impressed us as being excessive, and on this record we see no occasion for disturbing it.

No. 2362.

IN THE MATTER OF REGULATIONS GOVERNING SALE OF
COMMUTATION TICKETS TO SCHOOL CHILDREN.

Decided June 28, 1909.

Section 2 of the act precludes the allowance of commutation rates to school children unless the same rates are open to all children within the age limit. Former administrative ruling upon this question affirmed.

Frank A. Chalmers and Francis Shunk Brown for petitioners.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Upon petition of the Pierce School, of Philadelphia, and other schools in Philadelphia and New York, this proceeding was instituted for the purpose of hearing objections to the administrative ruling of the Commission, adopted October 12, 1908, which reads as follows:

Regulations governing commutation tickets must not discriminate as between classes of persons.—A carrier offers a 46-trip monthly commutation ticket and provides that it shall be issued only to pupils, without regard to age, who are in attendance on schools of a certain kind or class, and specifically provides for the exclusion of pupils attending various other kinds of schools; *Held*, That this regulation is unjustly discriminatory, and therefore unlawful, but that carriers may lawfully offer and use a commutation ticket limited in its sale and use to children or young persons between certain stated ages (as, for instance, from 12 to 21 years of age).

Such arrangement will provide desired rates for school pupils and will not exclude other children traveling under substantially similar circumstances, but for the purpose of securing other lines of instruction or on other missions. It will also protect against the use of such ticket by adults. The carrier may not inquire into the mission, errand, or business of the passenger as a condition of fixing the transportation rate which such passenger shall pay.

It is unnecessary at this time to repeat the arguments advanced on behalf of petitioners. In so far as they relate to the right of a carrier to fix different rates for the transportation of persons over the same line, between the same points, under substantially similar circumstances and conditions, the authorities were elaborately reviewed in the Commission's report, *In the Matter of Party Rate Tickets*, 12 I. C. C. Rep., 95, and it is sufficient to say that we adhere to the conclusions announced in that proceeding. Every consideration

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which led the Commission to hold that, if carriers desire to establish party rates, such rates must be open to the general public and can not be limited to a particular class of persons is equally persuasive of the unlawfulness of commutation tickets limited to the use of school children. In this connection it should be remembered that the Commission's ruling does not prohibit the publication of commutation rates for children of specified ages, but merely holds that such rates must be open to all children within the ages stated in the tariff.

The petitioners seek to justify reduced rates for school children upon the ground that such rates are in the nature of a charity, and therefore within the spirit if not the letter of the exceptions to the general rule contained in section 22 of the act. With this contention we are unable to agree. On the contrary, it seems clear to us that special rates for this particular class of passengers are not authorized by any of the exceptions in that section or by any other provision of the regulating statute. This being so, it follows that the prohibition of section 2 precludes the allowance of commutation rates to school children unless the same rates are open to all children within the age limit. The prayer of the petition is therefore denied and the conference ruling affirmed.

No. 1051.

BARTLES OIL COMPANY ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted May 10, 1909. Decided June 7, 1909.

Third class rates on less-than-carload movements of illuminating oils and gasoline from Minneapolis and St. Paul to points in South Dakota found unreasonable, and therefore unlawful, and defendants required to apply fourth class rates.

Durment & Moore for complainants.

William Ellis, Charles B. Keeler, and E. C. Nettels for Chicago, Milwaukee & St. Paul Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Illuminating oils and gasoline are classified in the Western Classification as third class in less-than-carload quantities. But in compliance with orders or recommendations by state railroad commissions fourth class rates are applied on those products of petroleum for intrastate less-than-carload movements within the states of Minnesota, Iowa, North and South Dakota, Nebraska, Kansas, Missouri, Oklahoma, and Wisconsin. To a limited extent, under special exceptions to the classification, particular carriers had been collecting fourth class rates on movements in certain parts of that territory before this complaint was filed. This is true of the Great Northern, the Northern Pacific, the Minneapolis & St. Louis, and the Chicago & North Western, with its allied line, the Chicago, St. Paul, Minneapolis & Omaha. For some time these lines have applied fourth class rates, not only on local movements within the state of Minnesota and within the states of North and South Dakota, but also on interstate movements between points in those states. But the principal defendant, the Chicago, Milwaukee & St. Paul Railway

Company, adheres to the third class rating provided in the Western Classification on all its interstate traffic in these articles, although it applies fourth class rates on intrastate movements within the states in which such rates have been prescribed by state commissions.

The petitioners herein are two Minnesota corporations, which, as dealers in the products of petroleum, receive carload shipments of illuminating oils and gasoline from the oil fields of Pennsylvania and, from their headquarters at St. Paul and Minneapolis and their other branch offices, distribute those commodities in less-than-carload quantities to retailers and consumers in Minnesota, North and South Dakota, and other northwestern states. The prayer of the petition is that the defendants be required to put fourth class rates in effect on less-than-carload movements from Minneapolis and St. Paul to all stations in the state of South Dakota, instead of the present third class rates, which are complained of as unreasonable.

Since the filing of the complaint the defendants the Minneapolis & St. Louis, Chicago & North Western, and Chicago, St. Paul, Minneapolis & Omaha railroad companies have amended their tariffs in this regard by publishing fourth class rates for the transportation of illuminating oils and gasoline. The complaint has been dismissed as to the first-mentioned road, and the complainants ask that it be discontinued as to the other two carriers, leaving the Chicago, Milwaukee & St. Paul the sole defendant. It is the only company that now applies third class rates between the Twin Cities and points in South Dakota, with the exception of the Chicago, Rock Island & Pacific Railway Company, which is not a party to the record and which reaches only a limited number of points in South Dakota.

Under a stipulation entered into by and between the complainants and the principal defendant, the testimony taken in *Marshall Oil Company v. C. & N. W. Ry. Co.*, 14 I. C. C. Rep., 210, was read in evidence and the case was submitted without any additional testimony whatever. The Commission dismissed the complaint in that case. There are some facts, however, that distinguish the two cases, and as we were not satisfied with the record made in the previous case the present case was set for further hearing. Additional evidence then adduced shows that fourth class rates on illuminating oils in less-than-carload lots are in effect throughout a more extensive territory than we were advised of when the case referred to was pending before us. It also shows that the other large systems referred to, including three lines that were made defendants in this complaint, have since voluntarily established fourth class rates on interstate movements of those commodities between points in Minnesota and the two Dakotas. The Northern Pacific and several other lines voluntarily established fourth class rates experimentally

from Minneapolis to their stations in North Dakota; and apparently the traffic that developed under those rates was found to be desirable, for the fourth class interstate rates are still in effect.

We have said not infrequently that this Commission is not controlled by the rates established by state commissions unless they seem to us reasonable rates when applied to interstate movements. In several instances when dealing with rates for interstate transportation we have refused to follow the action of state commissions. One such instance was in *Marshall Oil Company v. C. & N. W. Ry. Co.*, *supra*, and we should not hesitate in this proceeding to refuse to follow the state rates on illuminating oils if we had any doubt as to the reasonableness of that basis of rates as applied to interstate movements between the points in question. But in view of the extensive application of fourth class rates and the voluntary publication of those rates by other carriers on interstate movements between points in the states in question we are forced to the conclusion that fourth class rates must be compensatory and fairly remunerative rates between the points in question.

We reach this conclusion fully appreciating that oil in less-than-car-load quantities is not, generally speaking, a desirable traffic, and it has long moved in Western Classification territory on third class rates. But in the face of so formidable a showing as is made in this record we must hold that rates in excess of fourth class rates, as between the points in question, are unreasonable.

An order will be entered accordingly, and the case will be dismissed as against the defendant the Chicago & North Western Railway Company. And as the Chicago, St. Paul, Minneapolis & Omaha Railway Company does not seem to have been made a formal defendant no order of dismissal as to that road will be required.

No. 2024.

AMERICAN COAL COMPANY OF ALLEGANY COUNTY ET AL.

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted April 17, 1909. Decided June 7, 1909.

1. Upon the testimony adduced of record, *Held*, (1) That the defendants' rates on big-vein coal, from George's Creek basin in Allegany County, Md., to tide-water, when going over the piers to destinations outside the Delaware and Chesapeake capes are unreasonable and unduly discriminatory and ought not to exceed the rates contemporaneously in effect on small-vein coal from the same district and on coals from the Meyersdale, Austen-Newburg, and Upper Potomac districts in Pennsylvania and West Virginia when water borne to the same destinations. (2) That the defendants' rates on coals mined in George's Creek basin when destined to points in New York, Pennsylvania, New Jersey, and New England are unreasonable and discriminatory and ought not to exceed the rates to the same destinations from the Meyersdale, Austen-Newburg, and Upper Potomac regions.
2. George's Creek basin for ten years or more has been grouped for rate-making purposes with the Meyersdale, Austen-Newburg, and Upper Potomac coal-producing districts, and Philadelphia, Baltimore, Wilmington, and other points of consumption for a like period of time have also taken a group rate from all these mines; *Held*, That no showing is here made justifying an order disturbing this grouping of coal-producing districts and coal-consuming destinations.

Albert A. Doub, David J. Blackiston, and Enoch L. White for complainants.

William Ainsworth Parker and Hugh L. Bond, jr., for Baltimore & Ohio Railroad Company.

Jackson E. Reynolds for Central Railroad of New Jersey and Wharton & Northern Railroad.

Edward G. Buckland for New York, New Haven & Hartford Railroad Company, Wood River Branch Railroad, and Narragansett Pier Railroad.

Charles Heebner for Philadelphia & Reading Railway Company and Atlantic City Railroad Company.

Francis I. Gowen for Pennsylvania Railroad Company.

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REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The peculiar characteristics of the George's Creek coal basin, in Allegany county, in the state of Maryland, and the history of its development were explained in some detail in *George's Creek Basin Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C. Rep., 127, and need not be repeated here. The only special fact there disclosed that is of interest in connection with this complaint is that two veins underlie the basin, one producing what is widely known as "big-vein" coal and the other a coal known as "small-vein" coal. While the two coals upon a casual inspection are quite similar in appearance, we found on the testimony then before us that the big-vein coal brought a slightly higher price in the market and was understood, both by coal operators and coal consumers, to be of superior quality. It was also shown that in a few instances both big-vein and small-vein coal come out of the same opening and are handled over the same tippie. The complaint in that proceeding was filed by a company engaged in mining small-vein coal only, and involved the reasonableness of the rates of the defendants on coal of that kind when delivered over the piers at tidewater points for destinations inside and outside the Chesapeake and Delaware capes. No rates to other destinations were embraced in the order then entered, and the findings of fact on which the order was based may briefly be summarized from our report as follows:

The defendants, the Baltimore & Ohio and the Western Maryland, reach three coal districts, which for convenience are referred to in the report as the Pennsylvania, West Virginia, and George's Creek fields. Under an adjustment made in 1900, which was then entirely satisfactory to all concerned, these three fields were grouped together and took the same rate on coal destined for track delivery at points on the lines of those two roads. At that time the output of George's Creek basin consisted of big-vein coal only and it was concededly superior in quality to the coals mined in the other two districts. If it may be assumed therefore that the common rate from the three districts was a normal rate on the less valuable coal from the Pennsylvania and West Virginia fields, it necessarily follows that the rate reserved to the owners of the big-vein mines in George's Creek the full benefit and advantage of the superior quality of their coal. This was the important point in the original proceeding. The record showed that there was no competition from outside coal fields at local points on those lines. But when the coal went over the piers at Philadelphia, Baltimore, and Curtis Bay, for destinations inside and outside the two capes, it met the more or less severe competition of water-borne coal from mines on the Chesapeake & Ohio, Norfolk & Western,

Pennsylvania, and the New York Central railroads. It was necessary therefore to shrink the rates in order to enable the coal from these three fields to enter those markets. Because, however, of the superior quality of George's Creek coal, and of its ability more easily to meet such competition, the rates on that coal were shrunk less than the rates on the coals from the Pennsylvania and West Virginia fields. The result of the adjustment was that, as compared with the rates from those fields, there was a differential of 10 cents a ton against George's Creek coal when water-borne to competitive points inside the capes, and of 15 cents a ton when destined to points outside the capes.

In 1902, after this relation of rates as between the three fields had been in existence for about two years, the operators in George's Creek basin commenced for the first time to mine small-vein coal, which, as stated, is inferior in quality to the big-vein coal and is substantially the same as the coals mined in the Pennsylvania and West Virginia fields. But as the defendants in that proceeding made no distinction in their rates between big-vein and small-vein coal, the latter, with differentials of 10 and 15 cents a ton against it, could not move by water in competition with coal of the same quality from the other two fields; the record in fact showed that from the time the small-vein mines were opened in 1902 to the time when the hearing of that complaint was had not a single cargo of small-vein coal was shipped to competitive points either inside or outside the capes, although coal in large volume had reached those destinations from the other two fields.

It was under these circumstances that the original complaint was filed asking for relief on behalf of the small-vein operators. The complainants contended that the small-vein coal, with differentials against it, could not successfully enter the markets for water-borne coal. No attack was made in the complaint on the inherent reasonableness of the rates from George's Creek basin to tide-water points, but only upon the reasonableness of those rates, as applied to small-vein coal, when compared with the rates accorded to operators in the Pennsylvania and West Virginia fields. No complaint was made at that time either by or on behalf of the producers of big-vein coal in George's Creek basin. On the contrary, the witnesses who testified gave us to understand that the big-vein coal, because of its superior quality, had been able to hold its own under the existing rates in competition with the coals from the other fields, and therefore required no reduction in order to retain its markets. We were, in fact, advised that the big-vein coal had been so well and favorably known that it practically met with no competition at all from other bituminous coals, except

possibly from the New River coal on the Chesapeake & Ohio and the Pocahontas coal on the Norfolk & Western.

Although it was quite unusual, as we then explained (*idem*, p. 133), to have two rates on coal from one mining district, nevertheless as the big-vein coal was not shown to require any reduction in rates but was said to be moving freely in competition with the other coals, and as the issue made on the complaint was directed against the rates on small-vein coal only, we concluded, without committing ourselves to the general propriety of two rates from one district and basing our action strictly on the record before us, to order a reduction in rates on small-vein coal to tide-water points, so as to permit that coal to meet the competition of coals of like quality from the Pennsylvania and West Virginia fields. We thereupon entered such an order without disturbing the rates on big-vein coal, and the lower rates on small-vein coal were subsequently published by the defendants in that complaint. But we said in explanation of our exact attitude toward the whole situation that (*idem*, p. 133):

If the results are such as to demonstrate that the two rates can not be successfully maintained without giving rise to discriminations and unlawful practices, the question will then arise whether the lower rate should not be made effective from all mines in the basin, whether producing big-vein or small-vein coal. And it may be well also now to emphasize the fact that this disposition of the matter is not to be understood as an approval of such a rate adjustment either for general application or as controlling our action in the future in case complaint should be made of the rate on water-borne coal from the big-vein mines. We are to be understood only as giving recognition, on the record before us, to the right of the small-vein operators to have a rate that will enable them to move their output to the consuming markets and give them a reasonable opportunity to compete with similar coal from adjacent fields moving through Cumberland to tide water for destinations inside and outside the capes.

Complaint is now made in this petition on behalf of companies engaged in the mining of both big-vein and small-vein coal, and it rests upon two grounds: 1. That the differentials of 10 and 15 cents a ton against the big-vein coal constitute an undue discrimination that ought to be removed; and that the big-vein coal ought to be placed on a parity with the small-vein coal and with the coals from the Pennsylvania and West Virginia fields. 2. That, as the George's Creek coal basin is nearer to tide water than the Pennsylvania and West Virginia fields and the haul less expensive both on account of the shorter mileage and on account of the more favorable character of the grades, the rates from those mines to all points on the lines of the defendants should be less than the rates from the more distant western mines with which the mines of George's Creek basin are now grouped for rate-making purposes.

So far as the first point is concerned little need be said. The report of the Commission in the previous proceeding indicates the

action that might fairly be anticipated whenever the question of the reasonableness of the rates on big-vein coal, when water-borne to points inside or outside the capes, was properly presented to us accompanied by adequate proof that the differentials against it operated to its disadvantage. Such a complaint is now before us, and the testimony makes it quite clear that the reduction in the rates on small-vein coal required under our order in the previous case ought now to be extended to the rates on big-vein coal. In its effort to carry out that order with exactness the Baltimore & Ohio has required shipments of small-vein coal to be tagged and billed as small-vein coal. We see no objection to that course; but it appears from the record that the tag has been accepted in the trade and by the consumers as a badge of inferiority, and the result is that small-vein coal has not moved under the reduced rate as freely as was to be expected. There has also been a decided reduction in the output of the big-vein coal. The closer approach of many big-vein mines to the point of exhaustion, the lengthening of their underground workings, the increasing troubles with water in the mines, the substitution of timbers or other supports in place of the coal supports that are now being reclaimed and marketed, have added very substantially to the cost of the coal at the mouth of the mine, and in a growing degree this has tended to put the big-vein coal at a disadvantage in competition in the general markets with coals of like quality from other mining districts. It is said that the timbers in the big-vein mines cost many times as much as those used in the small-vein mines. The long headings and consequent long underground hauls require, besides an extension of the underground tracks, the use of motors and other mechanical devices not needed in the small-vein mines; and in other ways the cost of production has so increased in recent years that it is said now to exceed the cost in some of the competing districts by as much as 25 cents a ton. It was in fact definitely stated at the hearing that Pocahontas and New River coals had sold at the mines during the past year at from 80 cents to \$1 per ton; that this gave the operators of those mines a profit; and that at that price the big-vein coals of George's Creek, on account of the greater cost of production, could not enter the markets at all.

These matters, and the increased intensity in the competition of other fields, resulted in 1908 in a marked reduction in the output of big-vein coal as compared with the output in 1907, and this was more marked in the last half of the year than in the first half. The consequence is that a number of mines have been closed and many miners are idle. While this check in production is doubtless due in some measure to the financial disturbances in the winter of 1907-8, and has been observed in all coal-producing fields, we incline to the view that it has

been more severe in George's Creek than elsewhere. It is to be inferred that the principal defendant has itself felt the effect of these new conditions in George's Creek and that they are reflected in its voluntary removal, under a tariff quite recently made effective, of the differential of 10 cents a ton against big-vein coal going over the piers to destinations inside the capes. But the differential of 15 cents against big-vein coal when water borne to destinations outside the capes is still carried in its tariffs.

Upon this record and upon the record in the former case, which under a stipulation by the parties has been incorporated into this proceeding, we find that the rates on big-vein coal going over the piers to destinations outside the two capes are unreasonable and unduly discriminatory and ought not to exceed the rates in effect at the same time on small-vein coal and on coal from the Pennsylvania and West Virginia fields when water borne to the same destinations.

A second point in the case of the complainants is a demand for lower rates from George's Creek basin to tide water and local points because of its greater proximity to those destinations when compared with the distance from the mines in the Pennsylvania and West Virginia fields.

In the original proceeding the Baltimore & Ohio, the Western Maryland and its receivers, the Cumberland & Pennsylvania, and the George's Creek & Cumberland were the sole defendants. The records showed, as stated in the report (p. 129), that—

rates from George's Creek basin and from the Pennsylvania and West Virginia fields are the same when the coal is destined for track delivery on the lines of the principal defendants; that is to say, coal from mines in the Pennsylvania and West Virginia fields takes the same rate as coal from the George's Creek basin when it is destined for local consumption even at tide-water points.

This is still the relation of the rates on coal from the three fields when destined to local points on the Baltimore & Ohio and Western Maryland. The three fields have been thus grouped for ten years or more. Moreover, Philadelphia, Wilmington, and Baltimore, and intermediate points, at the other end of the haul, have for a like period of time also been grouped together under one rate for track delivery. In this complaint we are asked for the first time to consider the right of the mines in George's Creek basin to have lower rates than the mines in the Pennsylvania and West Virginia fields because of their shorter haul to points of consumption. In our report in the previous proceeding reference was made to the fact that the Pennsylvania fields are west and north of George's Creek on the Pittsburg branch of the Baltimore & Ohio Railroad and are from 50 to 100 miles more distant from tide-water points than are the mines of George's Creek. We found in that proceeding that the mines in the West Virginia

fields lie from 60 to 85 miles south and west of George's Creek basin on the main line of the Baltimore & Ohio, and also on the line of the Western Maryland, and are to that extent more distant from tide-water than the George's Creek mines. Because of their closer proximity the complainants now demand for their mines in George's Creek basin a corresponding advantage in rates to all points on the lines of the defendants, whether the coal is intended for local consumption or to go over the piers to markets reached by water-borne coals.

From Cumberland to Baltimore, as the record discloses, there is a descending grade, and the other conditions of transportation seem to be less complicated than is the case west of Cumberland. The tracks from the two fields on the west lead up to Cumberland on an ascending grade. The complainants urge that these adverse conditions of transportation from the West Virginia and Pennsylvania fields, when considered together with their greater mileage, justify lower rates from George's Creek basin than from mines in those two districts. In this connection the complainants also call attention to the fact that the distance from George's Creek basin to tide water at Baltimore is but 229 miles, as compared to 295 miles at Wilmington and 325 miles at Philadelphia. On this ground they also ask rates to tide water at Baltimore that are lower in proportion to mileage than the present rates to Philadelphia and Wilmington.

While we are not disposed to criticize the desire on the part of the operators of George's Creek to secure better rates than their competitors in the other two fields enjoy, we are not inclined, on the other hand, to yield to their demand. There are many coal groups that are much more extensive than this group. Moreover, it has been our understanding that group rates, particularly on such a commodity as coal, are advantageous to the public, the carriers, and the mine owners alike. The disruption of this grouping of coal-producing districts and coal-consuming destinations after it has been in effect for so many years could not fail to lead to a widespread confusion in coal rates, and we see nothing in the record to justify such an order.

The final point that we are asked by the complainants to consider is this: For convenience we have referred, both in our report in this proceeding and in the former case, to various mining districts west of George's Creek basin as the Pennsylvania and West Virginia fields. The Meyersdale district, which seems sometimes also to be called the "Somerset" district, is the special coal region in Pennsylvania embraced in our references to the Pennsylvania field. The Austen-Newburg and the Upper Potomac districts in West Virginia and Maryland have been referred to as the West Virginia fields. Coals from both fields

pass through Cumberland, or an adjacent point, when carried by the Baltimore & Ohio, and through Piedmont or Cumberland, or a nearby point, when carried by the Western Maryland. As stated in our report in the previous proceeding, George's Creek basin is not on either of those two lines, but on the lines of the Cumberland & Pennsylvania and the George's Creek & Cumberland, both being short lateral lines constructed for the purpose of reaching the George's Creek mines. If the mines in that basin were directly on the line either of the Baltimore & Ohio or the Western Maryland they would be intermediate in every sense to the Meyersdale, Austen-Newburg, and Upper Potomac districts with respect to all movements to tide water and other points reached by the principal defendants and their connections. In such case there would, therefore, be an absolute violation of section 4 of the act whenever the rates from George's Creek basin were in excess of the rates from the other and more distant districts. In our previous report the fact that George's Creek basin was situated on lateral lines was noted, but we held (p. 130) that for all practical purposes mines in the George's Creek basin are intermediate to the mines in the more westerly districts. The point is of some importance in connection with the final contention of the complainants. It is shown that to many points in New Jersey, New York, Connecticut, Massachusetts, Rhode Island, and Pennsylvania the rates from the Meyersdale, Austen-Newburg, and Upper Potomac districts on coal passing through Cumberland, or points adjacent thereto, are less than the rates on George's Creek coal passing by a shorter haul through the same points to the same destinations. To all these points, reached by the Baltimore & Ohio and the Western Maryland in connection with the other defendants which have been made parties to the complaint for the purposes of this contention, the exhibits filed by the complainants show that the rates from George's Creek basin are from 10 to 25 cents a ton higher than the rates from the Meyersdale, Austen-Newburg, and Upper Potomac regions.

This situation is brought to our attention for the first time in this proceeding and is not accompanied by any explanation on the part of the defendants that we can regard as satisfactory. While it is true, as stated, that the George's Creek mines are on lateral roads they must be regarded, as we have heretofore held, as intermediate for all practical rate-making purposes. On that ground the burden was on the defendants to justify the higher rates from George's Creek basin than from the mining districts west of that point, and this they have not done. But aside from this technical view of the matter we regard such a relation of rates as unwarranted on the record before us. So far as the small-vein coal is

concerned it is clearly unreasonable to impose upon it higher charges for the shorter haul to such destinations than are imposed on coal passing over substantially the same tracks from the more distant mines. And the experience of the operators of the big-vein mines during the past year, based upon the considerations heretofore adverted to, have led us to the conclusion that it is equally unreasonable to impose higher rates on big-vein coal to such destinations than are imposed at the same time on the coals from the more distant fields. and we so find.

The petition is directed to the rates from the Cumberland region, which we understand to include George's Creek basin and the so-called Elk Garden region, the latter producing a coal substantially similar to the big-vein coal of George's Creek. And our findings are to be understood as applying also to the rates from the Elk Garden region. In the brief of the complainants reference is made to higher rates from George's Creek basin to Washington than to Baltimore, the haul to Washington being shorter than the haul to Baltimore. While that point is not covered either by the complaint or the testimony, and therefore ought not to be embraced in any order entered in this proceeding, it may be well nevertheless to say that the impression left upon us by such consideration as we have been able to give to those rates is that they ought to be readjusted.

An order will be entered in accordance with these views.

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No. 1597.

BROOK-RAUCH MILL & ELEVATOR COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted May 3, 1909. Decided June 28, 1909.

The relations between the defendants and T. H. Bunch and the T. H. Bunch Company examined; and *Held*, That the lease to Bunch, at a nominal rental, of an elevator erected by the defendants on their right of way at Argenta, Ark., operates as an unlawful preference in favor of Bunch and as an unjust discrimination against dealers and shippers of grain at Little Rock. The defendants are ordered to cease and desist from the continued performance of their contract and the aforesaid unlawful practices.

R. T. Brook for complainant.

Martin L. Clardy and *Henry G. Herbel* for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainant, a corporation organized under the laws of Arkansas and engaged in the grain business at Little Rock in that state, charges in its petition that for several years the defendants have granted to one T. H. Bunch, or to the T. H. Bunch Company, rebates from their established rates on thousands of carloads of grain and provisions, and that the defendants have paid fictitious claims presented by Bunch for alleged losses and delays in transit, while the complainant has been unable to secure a settlement of its legitimate claims and has enjoyed no concessions in the rates paid by it. But as these allegations relate to matters that are criminal in character and have already had attention by the Commission as well as by the courts, they will not be considered further in connection with this proceeding. The complaint also involves alleged preferences in favor of Bunch and discriminations against the complainant and others in the matter of switching services at Little Rock. Without entering into any discussion of what the record discloses in that connection, it will suffice to say that the Commission does not find that the allega-

tions are sustained by the evidence, and no order in this relation is therefore required.

Nor does the evidence support the charge also made in the petition that the defendants have granted Bunch the use of a freight warehouse at Little Rock for a nominal rental. The fact seems to be that some years ago Bunch leased from the defendant, the St. Louis, Iron Mountain & Southern, a wooden freight warehouse, on its right of way in Little Rock, at a yearly rental of \$300, Bunch paying the taxes. This rental appears to have been a fair one, considering the value of the property. In 1905 the freight house was destroyed by fire. And at a cost to him of about \$27,000 Bunch thereafter erected a substantial brick structure on the site. The new warehouse he subsequently sold to the Iron Mountain for something less than \$25,000, the purchase being made to enable it to comply with an order of the railroad commission of Arkansas requiring an increase of its freight facilities at Little Rock.

The only question of real substance in the case is whether the conditions under which T. H. Bunch, or the T. H. Bunch Company, uses and operates what is known as the Bunch mill and elevator in the city of Argenta, on the north side of the Arkansas River opposite Little Rock, work an undue preference to Bunch and an unlawful discrimination against the complainant and other shippers similarly situated. It may be well here to say that neither T. H. Bunch nor the T. H. Bunch Company is a party to the record. Nor does the record disclose whether the latter is a corporation, a stock company, or a partnership. But for the purposes of this proceeding the interests of T. H. Bunch and the T. H. Bunch Company may be regarded as identical.

The complainant operates an elevator in the city of Little Rock with a storage capacity of 18,000 bushels, and also a grain mill with a grinding capacity of 400 barrels of corn meal per day. It has invested about \$15,000 in the plant. The ground and buildings are leased from the owners. Previous to October 1, 1905, the mill and elevator were operated by the Rauch-Darragh Grain Company. A private switch track, at which six cars may be set at one time for loading and unloading, connects the mill and elevator with the line of the St. Louis, Iron Mountain & Southern. The complainant buys its corn in the states of Kansas, Missouri, and Oklahoma, and ships and sells it at various points in Arkansas and other states, after having milled it in transit or subjected it to the processes of elevation at Little Rock. When the complaint was filed there was another elevator at Little Rock, with a small mill adjoining it, that was owned and operated by the Cunningham Commission Company, and had a storage capacity of about 25,000 bushels of corn. The present plant

on that site was erected in 1906, the mill and elevator which the company had operated there since 1900 having been destroyed by fire in the fall of 1904.

From a careful examination of the record and from investigations that we have had occasion to make, in another connection, of the books and records of these defendants, we think it entirely within the limits of calm judgment to say that the relations between the proprietors of the Bunch elevator and mill at Argenta and the railroad company were fraudulent in their inception, so far as the observance of the lawful rates of the defendants was concerned, and continued so up to the time when indictments were rendered against the railroad company and Bunch in proceedings in the federal court in which both were afterwards subjected to severe penalties in the way of fines.

The original agreement between Bunch and the St. Louis, Iron Mountain & Southern and the Little Rock & Fort Smith Railway Company, which has since been acquired by the Iron Mountain, was entered into in April, 1904; and, as we have every reason to believe, was intended as an adjustment of unlawful obligations arising out of previous understandings and arrangements that were illegal. Under the agreement of April, 1904, the railway companies undertook to erect on their right of way an elevator and milling plant, the estimated cost of which completely equipped was to be \$69,369.12. The completed plant and the ground upon which it stood, something less than an acre in area, were leased to Bunch for his natural life or so long as the elevator should be used and operated by him. The lessee, Bunch, undertook to pay all taxes, assessments, and insurance premiums, and to keep the buildings and machinery in repair. As rental for the whole plant he was required to pay the sum of one dollar a year. When the contractor had finished the work the total cost of erecting and equipping the plant was found to be \$106,821.76, exclusive of the value of the land upon which the elevator stood. This was more than had been contemplated by either party to the agreement. A supplemental agreement was therefore entered into on November 23, 1904, which set forth the substance of the prior undertaking and the amount contemplated therein as the cost of the undertaking, and required Bunch to execute and deliver to the defendant eight negotiable promissory notes, for the excess over that amount, aggregating the sum of \$37,452.64. Notes to cover interest on the principal notes were also required of Bunch. The lessee bound himself to pay each and all of these notes at maturity, and upon his failure to pay any note when due it was covenanted that the lease and agreement might be terminated at the option of the railroad company. Bunch has paid only two of these principal notes and has

failed and refused to pay the other two that have since matured. The complainant asserts that the railroad company has itself paid the taxes and assessments and has kept up the insurance, so that, excluding the two notes paid by him, the entire cost to Bunch for the use of the complete plant has been only one dollar per year. The elevator has a storage capacity of 225,000 bushels and the mill is capable of grinding about 1,200 barrels of corn meal per day. It is situated, as heretofore stated, on the right of way of the Iron Mountain and has ample sidetrack facilities.

The ostensible object and purpose, as stated by the railroad companies, in leasing the mill and elevator at Argenta to Bunch were to supply free elevator facilities in the vicinity of Little Rock for the use and benefit of the grain shippers over their lines. As a part of the consideration for the lease Bunch agreed to receive and handle, without cost and without discrimination, all the grain tendered to him by other shippers for elevation or storage. That, however, has not been the use actually made of it. In one or two instances damaged corn has been received and handled at the Bunch elevator for the railroad company; and after the Cunningham plant was destroyed by fire a few carloads of grain were stored for that company, not free of charge, however, but at an agreed compensation the amount of which does not appear of record. Aside from these instances the record does not show that any grain not owned by Bunch has ever been received for storage or treatment in the Argenta elevator. We are wholly unable to find that in actual practice the mill and elevator have been operated by Bunch for the use of the public, and we incline to the view that it was never the real object of the arrangement to make them available to shippers generally as a public mill and elevator.

The wrong in the situation lies in the fact that T. H. Bunch is a grain dealer who buys, mills, and sells corn in active competition with the complainant and other traders. He does not operate a public elevator, and his plant is in no real sense a transportation or terminal facility of the railroad company, but has been and is conducted wholly in his private interest. He is a shipper over the lines of the defendants and in that capacity, as we find from the record, is unlawfully benefited by the arrangement and unduly preferred over other shippers.

In addition to furnishing Bunch with the mill at Argenta and the free elevator in which his own grain is hauled, the principal defendant for about a year paid him an allowance of $1\frac{1}{4}$ cents per 100 pounds for elevating his own grain. It did this under a tariff filed with the Commission in September, 1905, providing for such an allowance on grain handled in the "Little Rock elevator on the Iron Mountain tracks." Obviously a tariff so worded can not be construed as

authorizing an allowance on grain passing through the Bunch elevator at Argenta. It is not necessary, however, to examine further into that matter in this proceeding, for it appears that no allowance has been paid to Bunch for the elevation of grain at Argenta since July 1, 1906, when that tariff was canceled. The complainant, on the other hand, has received no allowance at any time on grain handled through its elevator in the city of Little Rock. It is said that the tariff authorizing the elevation allowances was not openly posted as required by law, but was issued secretly.

While the allegations of the petition with respect to the payment of rebates to Bunch at and shortly prior to the date of its filing are not sustained by competent testimony, as heretofore stated, it is important to note that the defendant companies, their traffic manager, and T. H. Bunch pleaded guilty to indictments returned against them in the district court of the United States for the eastern district of Arkansas and were severely fined, the latter for receiving and the former for giving unlawful rebates as far back as July, 1905, and as recently as February, 1907. The rebates proved in those criminal proceedings were made, as we are advised, in the form of direct departures from the published grain rates, and additional rebates appear to have been effected through the payment to Bunch of unauthorized elevation allowances. These matters are referred to here only for the purpose of emphasizing the illegality of the whole relation that has from the beginning existed between the Bunch interests and the defendants.

The defendants must have known and intended from the outset that the erection and leasing of the elevator to Bunch would result, as in practice it did, in an unjust and unlawful discrimination against other dealers and shippers of grain. The evidence leaves no room for seriously doubting that an unlawful preference in favor of Bunch was contemplated when the arrangement was entered into. The defendants could not lawfully furnish an elevator for Bunch as a shipper unless they stood ready at the same time to build the same kind of elevators for competing dealers at Little Rock, or took the steps necessary to give to all shippers free access to and use of the one they had erected for Bunch. For financial and other reasons, the carriers could not build and lease elevators to all the shippers at Little Rock and Argenta, and Bunch did not, or under the provisions of his lease would not, permit any other shipper to have the use of the Argenta elevator. He operated the elevator for himself exclusively and refused to permit the shipping public to use it for the storage or treatment of their grain, and it may fairly be assumed that the defendants were aware that this was his practice.

It must be observed that the defendants have refused to enter into any similar arrangement with the complainant and other grain dealers. Before the construction of its new plant, the Cunningham Company negotiated with the defendants for the leasing of an elevator and an agreement was drawn up by the defendants which ran from year to year only and provided that on short notice the carriers might oust the lessee for various causes. The Cunningham Company naturally felt that it could not enter into the undertaking on any such unfavorable terms. Some time during the year 1906 the complainant applied to the Iron Mountain for a lease of ground on its right of way upon which to construct a mill and elevator and was offered a one-year lease, which of course it could not accept.

Although Argenta and Little Rock seem at one time to have been embraced in one government, they have for some years been separate municipalities. Moreover, the railroads in making up their tariffs have named rates to both places, and the law therefore required them to observe their rates to and from each place. For this reason, as heretofore intimated, a tariff providing for an allowance to the Little Rock elevator would not justify the payment of an allowance to an elevator at Argenta. Nevertheless the two communities are so close geographically as to form in many respects one commercial center, and privileges and advantages accorded to the Bunch interests at Argenta would necessarily affect the complainant and other dealers and shippers of grain at Little Rock to whom they were denied. We therefore find that the arrangement between the defendants and the Bunch interests at Argenta from the beginning has actually worked a preference on the one hand and a gross discrimination on the other. Bunch, as a dealer in and shipper of grain, has received an immense advantage as the result of having the free use of a modern mill and a large elevator, fully equipped. He has been able to conduct a large business on a small capital, having no considerable amount invested in his plant; and his opportunity to make money in the handling of grain has been so much greater than that of any other dealer in Little Rock that he is almost able to monopolize the business.

On the part of the defendants it is contended that a bona fide effort is being made to oust Bunch and to cancel the arrangement, an action of ejectment having been brought in the state court shortly after the filing of the complaint herein. Whether such a proceeding is an appropriate one or is being conducted in good faith we are not called upon to say. The sole question for us to determine is whether the arrangement results in an unlawful preference in favor of Bunch and an unjust discrimination against other grain dealers. Neither in the testimony offered on behalf of the defendants nor in their printed

argument do we observe anything that justifies their course of action in this matter or that legally sanctions their relations with Bunch; and on the whole record we find that the arrangement results in an undue preference on the one hand and an unjust discrimination on the other. The contract upon which Bunch rests his right to the free use of the railroad's facilities or property has been discriminatory from the beginning. The act to regulate commerce as it was in force at the time the undertaking was entered into prohibited all unjust discriminations. The agreement therefore was unlawful and void *ab initio*. The general principles underlying our decision in *Eichenberg v. Southern Pacific Co.*, 14 I. C. C. Rep., 250, are equally applicable here. That one shipper may not enjoy at the hands of a carrier advantages that are denied to other shippers is a principle asserted in the act throughout its various provisions, and has been consistently enforced by us in numerous reported cases that are familiar to all and therefore need not be cited here.

An order will be entered requiring the defendants to cease and desist from the continued performance of their contract with Bunch and the practices herein found to be unlawful.

17 I. C. C. Rep.

No. 2502.

ÆTNA POWDER COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted June 1, 1909. Decided November 23, 1909.

The defendant's l.c.l. rate on gunpowder in quantities of less than 10,000 pounds was twice the first class rate, while on shipments exceeding 10,000 pounds the single first class rate applied; *Held*, That a charge on complainant's shipments of less than 6,000 pounds that exceeds the charges assessable on an l.c.l. shipment of the same commodity of 10,000 pounds is unreasonable. Reparation awarded.

A. G. Fay for complainant.

William Ellis for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

During the months of May, June, and July, 1907, eight carloads of gunpowder were shipped by the complainant, the Ætna Powder Company, from Chicago to Green Bay, Shullsburg, and Platteville, in the state of Wisconsin. Each car contained something less than 6,000 pounds of gunpowder, but under tariffs of the defendant then in effect charges were assessed at twice the first class rate upon the actual weight of each shipment. Had the shipments weighed more than 10,000 pounds, but less than 20,000 pounds, the single first class rate would have been charged. The complainant was therefore compelled to pay on less than 6,000 pounds more than it would have been required to pay under the effective tariffs had each shipment weighed 10,000 pounds. It complains of this rate adjustment and the defendant admits that the complaint is well founded. By agreement the case is submitted upon the pleadings which show, among other things, that on January 12, 1909, the defendant put in effect a tariff providing that shipments of gunpowder weighing less than 10,000 pounds should be charged twice the first class rate on the actual weight, the aggregate charges not to exceed the charges on 10,000 pounds; and shipments weighing between 10,000 and 20,000 pounds should be charged the first class rate on the actual weight. We may fairly assume that this amendment in its rates was made by the defendant in order to correct the obvious inequality under the tariff theretofore in effect.

We find that the rates charged on the shipments in question were excessive to the extent that they exceeded the amounts that would have been assessable under the new tariff. We also find that the complainant is entitled, on that basis, to reparation in the amount of \$55.28, with interest, and it will be so ordered. As the complaint involves a relation between the rates on shipments of less than 10,000 pounds and the rates on shipments of 10,000 pounds and over, and the defect in that relation has already been corrected, no order controlling the rate for the future seems to be required.

No. 2818.

CENTRAL COMMERCIAL COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted September 4, 1909. Decided November 23, 1909.

Rate of 38 cents per 100 pounds on liquid asphaltum from Caney, Kans., to Minneapolis, Minn., held unreasonable and the rate for the future fixed at 19½ cents. Reparation awarded.

W. F. Krohn for complainant

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

Upon a shipment of liquid asphaltum weighing 71,220 pounds, made by the complainant on June 2, 1908, from Caney, in the state of Kansas, to Minneapolis, in the state of Minnesota, the charges collected aggregated \$270.64, based upon a published rate of 38 cents per 100 pounds. At the same time there was in effect from Coffeyville, Chanute, Erie, and other points in the immediate vicinity of Caney, a rate to the same destination of 19½ cents per 100 pounds, and this rate on October 1, 1908, was also made effective from Caney.

Upon the admission of the defendants that the rate charged was unreasonable to the extent that it exceeded 19½ cents, we so find. An order may be entered awarding reparation on that basis, with interest, and requiring the maintenance of that rate for the usual period of time.

No. 2160

LAUTZ BROTHERS & COMPANY, INCORPORATED,
v.
LEHIGH VALLEY RAILROAD COMPANY ET AL.

Submitted July 20, 1909. Decided November 24, 1909.

Class rates from Buffalo, N. Y., to certain points on the line of the Delaware & Hudson Company north of Whitehall, N. Y., were increased for the purpose of removing a discrimination which existed in favor of Buffalo as compared with points east thereof. Complaint alleges that to increase the rates was unreasonable. The rates are not complained of as unreasonable *per se*. These rates are blanketed over a considerable territory of origin and again over a considerable territory of distribution; *Held*, That disruption of such grouping would be unwarranted. Complaint dismissed.

C. D. Coyle for complainant.

Kenefick, Cooke & Mitchell for Lehigh Valley Railroad Company.

Lewis E. Carr and *John E. MacLean* for Delaware & Hudson Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant corporation manufactures common soap and washing powder at Buffalo, N. Y. Part of its field for the sale of such articles is along the line of defendant Delaware & Hudson Company north of Whitehall, N. Y.

Common soap and washing powder are classified as fifth class in carloads, and less-than-carload shipments are subject to Official Classification Rules 28 and 26. These rules make reference to the third and fourth classes, and therefore the rates that affect the complainant are those for the third, fourth, and fifth classes.

On November 9, 1908, defendants increased their class rates from Buffalo to points north of Whitehall, the increases being 2.5 cents per 100 pounds on the third and fourth classes and 2 cents on the fifth class. These increases are the subject of this complaint.

In the five months previous to the date of the advance in the rates complainant shipped 1,131 boxes of soap and washing powder to points north of Whitehall, and in the five months subsequent to that

date 2,575 boxes. It appears that on complainant's shipments during the five months following the advance in rates the additional freight charges did not exceed \$60.

While complainant is interested only in the three class rates mentioned, its complaint includes the full series of class rates, alleges that the advance is unreasonable, and prays that the rates in effect immediately prior to November 9, 1908, be restored.

Prior to the advance the class rates from Boston and New York to the points in question were practically equal to the rates from Buffalo. The distance to Whitehall from Boston is about 280 miles; from New York about 221 miles; and from Buffalo about 420 miles. The short line between Buffalo and Whitehall is via the New York Central and the Delaware & Hudson. No through rates have ever been established via this short line. The local rates based upon Schenectady have been charged, and these have always exceeded the rates complained of. Until recently no joint through class rates have applied to the points in question via the Erie, the Delaware, Lackawanna & Western, and the Lehigh Valley railroads in connection with the Delaware & Hudson. The rates were constructed from joint class rates ranging from 44 to 15 cents per 100 pounds to Whitehall, N. Y., plus the Delaware & Hudson locals beyond. In all cases those rates exceeded those now complained of. In 1905 and 1906 these carriers established joint through class rates to points north of Whitehall equal to the previously existing rates to Whitehall. During all this time the Pennsylvania Railroad, in connection with the Delaware & Hudson, had charged through class rates between the points in question equal to those now complained of.

The reason for this increase, as stated by the defendants, was not that the Pennsylvania was charging those rates, but for the purpose of harmonizing the Buffalo rates with the rates from points east of Buffalo to the same points of destination, and thus removing a discrimination in favor of Buffalo. These same rates are now in effect from points on the Erie and the Delaware, Lackawanna & Western as far east as Bergen Junction, N. J.; from points on the Lehigh Valley as far east as Bayonne, N. J.; and from points on the Pennsylvania to and including Newark, N. J. An order granting the relief prayed for in this complaint would favor Buffalo as against all these points which now have the same class rates, and from which no complaint has come.

The rates complained of have been established for the purpose of eliminating an apparent discrimination, and on the record we would not be justified in disrupting this group system of rates. The rates were not alleged to be unreasonable *per se* and no testimony was offered in that respect. The complaint will be dismissed.

No. 2138.

MUSKOGEE TRAFFIC BUREAU

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted August 30, 1909. Decided November 24, 1909.

Complaint alleges unjust discrimination against Muskogee, Okla., in favor of Fort Smith, Ark., in that rates on salt from Kansas salt-producing points were lower to Fort Smith than to Muskogee. Subsequently to the filing of complaint the rates were made the same to Fort Smith and Muskogee, resulting in substantial reduction in the rate to Muskogee. This change, together with other readjustments of salt rates in that territory, have not been in effect long enough to demonstrate their effect. It appears that the effect has been and must be advantageous to Muskogee. The rates from a considerable territory of production are blanketed and substantial equality between producing points and markets is so established. Complainant's contention for rates based solely upon distance can not be sustained. Complaint dismissed.

Roach & Bradley, by *Chris M. Bradley* and *R. D. Sangster*, for complainant.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; and Union Pacific Railroad Company.

B. M. Flippin and *K. M. Wharry* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

R. W. Hockaday for Missouri, Kansas & Texas Railway Company.

Edgar A. de Meules for Midland Valley Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This complaint, brought by a voluntary association of shippers, alleges that the rate of 22½ cents per 100 pounds on all kinds of salt, carloads, from Kansas salt-producing points to Muskogee, is unjust,

unreasonable, and discriminatory as compared with the rate of 15 cents to Fort Smith, Ark., on the same commodity from the same points.

For the reason that on an average of all routes Fort Smith is 84 miles farther distant than Muskogee from points of origin, the prayer is that Muskogee be given a difference in rate under Fort Smith of 3 cents per 100 pounds.

Not all of the defendants participate in the joint through rates. Generally speaking, the correctness of the rates was not denied but many of the defendants set forth that at the time of answering a readjustment of the rates was in contemplation. Effective May 1, 1909, the rate on salt, carloads, minimum weight 30,000 pounds, from Kansas points to Muskogee and to Fort Smith, was made the same, 19 cents per 100 pounds. Complainant, however, insists that Muskogee is entitled to a lower rate than Fort Smith, and that contention being combated by defendants the issue of relative adjustment is made.

Complainant's principal witness, its manager, testified that the strength of its contention for lower rate was the difference in distance from producing points to Fort Smith and Muskogee. A statement was put in evidence giving the distances and the rates per ton per mile from Hutchinson, Kans.; Detroit, Mich.; and St. Louis to Muskogee, and similar information from the same points to points in Kansas, Nebraska, Missouri, and Iowa, from which comparisons it was shown that if the same bases per ton per mile were applied to the distance from Hutchinson to Muskogee, the rate would range from 6.1 cents to 16.9 cents per 100 pounds.

A statement was introduced showing the value per ton at point of origin, the distance rate, and the rate per ton per mile on salt, cement, common brick, coal, lumber, and wheat from producing points to Little Rock, Fort Smith, Muskogee, and Oklahoma City as evidentiary of the unreasonableness of the rate complained of. To indicate the commercial importance of Muskogee a tonnage statement was submitted showing the amount of freight, in pounds, received at and forwarded from that point for the years 1900 to 1908, both inclusive. The figures for 1908 are—received, 810,006,421; forwarded, 336,216,848; total, 1,146,223,267, over ten times more than in 1900.

Witnesses representing wholesale grocery houses located in Muskogee, with an aggregate capital stock of \$670,000, were of the opinion that the rate to Muskogee, based on mileage, should be lower than that to Fort Smith. None of them could testify as to the effect on Muskogee as compared with Fort Smith of the present adjustment of rates, as it had been in effect but three weeks at the time of the hearing and the salt season was practically over, but they felt

that it had materially benefited Muskogee. In addition to the difference in distance, all of these witnesses referred as a basis for their opinion to the fact that commodity rates to Fort Smith from points east of the Mississippi River, where the distance was less than to Muskogee, were lower, and they therefore thought that on any commodity coming from the West, Northwest, or Southwest Muskogee should be given consideration similar to that received by Fort Smith on commodities from the North and East. In other words, while admitting that under current salt rates Muskogee and Fort Smith are on a parity, on in and out rates, the latter's advantage on other commodities from other points of origin should be offset, in part at least, by giving Muskogee an advantage in salt rates, taking its lesser distance into consideration. One of these witnesses testified that his firm had houses located at Muskogee, McAlester, Coalgate, and Durant. By thus locating at different points their goods are laid down in carloads nearer the final points of destination to which they are distributed.

It appears that Kansas salt comes in keen competition with Michigan salt, and that when the rates are the same the latter is preferred. Under the previous adjustment of rates Kansas salt could not compete with Michigan salt at Muskogee. The secretary of the Carey Salt Company, manufacturers of salt at Hutchinson, Kans., testified that rates on salt had been in an unsettled condition for some time; that recent changes had been made, and that he was unable to say what effect they would have. He had no complaint to make as to the rates, his sole care being that they should be adjusted so as to enable his company to sell the salt. He had no opinion as to whether the rates were right or wrong, but said that he would not want to have producing points in Kansas that are nearer to Oklahoma points given a lower rate on that account. The cause of the difference in rates to Fort Smith and Muskogee at the time complaint was filed is not disclosed by the evidence. It is suggested that as Fort Smith is located on the Arkansas River its adjustment was due to its having been in the early days considered a gateway to a large territory with its rates controlled by water competition. Muskogee is near Fort Gibson, also on the Arkansas, and the statement was made by counsel for complainant that the Government formerly brought to that point by boat over \$5,000,000 worth of freight a year, and that the river is now navigable to that point.

The 15-cent rate to Fort Smith was a terminal rate and did not apply to near-by points. Under the readjustment the rates to such near-by points were reduced. It is apparent that the carriers have recognized the changed conditions in the territory in which Fort Smith and Muskogee are located, have taken into consideration the

effect of the advent of new lines and the phenomenal growth of some of the towns, and have made numerous changes in rates. The position of defendants is that the best possible adjustment has been made, and that considering the fact that the rates are blanketed from a large producing area to a wide consuming section they are now on a fair and equitable basis.

During the year 1908 there was consumed in or distributed from Muskogee 60 carloads of salt, 35 of which came from Kansas, 15 from Michigan, and 10 from other points. This, however, does not take into consideration what are termed "drop shipments;" that is, salt sold by Muskogee jobbers and shipped from points of production direct to purchasers at points other than Muskogee. Under the present adjustment the rates on salt from Michigan points are to Fort Smith 29½ cents and to Muskogee 31 cents per 100 pounds. The rates from St. Louis to Fort Smith and Muskogee are the same, although Muskogee is 40 miles farther distant.

Prior to the recent readjustment of rates the Santa Fe system had rates on salt from Anthony, Hutchinson, Kingman, Lyons, and Sterling, Kans., via Arkansas City, Kans., to stations on the Midland Valley Railroad as follows: To Hardy, 17 miles from Arkansas City, 18 cents; to all stations from Wheeler to Haskell, 146 miles from Arkansas City, 20 cents; to all stations from Muskogee to Maney Junction, 257 miles from Arkansas City and 16 miles from Fort Smith, 22½ cents; to Fort Smith, 15 cents; and to Hackett, Ark., 19 miles beyond Fort Smith, to Hartford, 39 miles beyond, 20 cents. Under the readjustment Hardy retained its former rate, the rate to all stations from Frankfort to and including Fort Smith was changed to 19 cents, and to the stations beyond to 20 cents. So it will be seen that on the Midland Valley the blanketing of the rate of 19 cents covers stations back 234 miles from Fort Smith. Under the previous adjustment the rate to Fort Smith was unique and out of line.

Complainant's chief witness testified that he had closed his eyes to every condition and all circumstances except those relating to the situation as between Fort Smith and Muskogee. The Commission's vision, however, must not be so restricted. The whole adjustment from points of production to points of destination must be viewed. As has so often been said, distance is an important, but not necessarily a controlling, factor in rate questions. Whether or not it is conclusive depends upon the facts in the case. On a strict per-ton-per-mile adjustment Muskogee would be entitled to a lower rate than Fort Smith via the lines of some defendants and as to other defendants the opposite would be true. It was admitted at the hearing that complainant was not justified in asking a lower rate to Muskogee than to Fort Smith via the Rock Island and Frisco lines

for the reason that via those lines there is practically no difference in distance. On that basis also many places located nearer to the points of production would be entitled to lower rates than would Muskogee, and rates from points of production to Muskogee would increase as the distance from such points increased. The present free competition between the producing points would be destroyed. Per-ton-per-mile comparisons are often helpful in reaching a conclusion in respect to the reasonableness of rates, but to take that as the sole test would be a scrutiny from the narrowest view point which would deny consideration to many other potent and frequently controlling forces which must be given due weight in a proper determination.

Gustin v. A., T. & S. F. Ry. Co., 8 I. C. C. Rep., 277; *Farrar v. Southern Ry. Co.*, 11 I. C. C. Rep., 640; *Dallas Freight Bureau v. G. C. & S. F. Ry. Co.*, 12 I. C. C. Rep., 223; *Wilhoit v. M., K. & T. Ry. Co.*, 12 I. C. C. Rep., 138; *Topeka Banana Dealers' Asso. v. S. L. & S. F. R. R. Co.*, 13 I. C. C. Rep., 631; *Burnham, Hanna, Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C. Rep., 313; *Monroe Progressive League v. S. L., I. M. & S. Ry. Co.*, 15 I. C. C. Rep., 534.

Whether or not the grouping of points of origin or points of destination constitutes undue or unjust discrimination must be determined from the facts in each case. *Imperial Coal Co. v. P. & L. E. R. R. Co.*, 2 I. C. C. Rep., 618; *Mitchell v. A., T. & S. F. Ry. Co.*, 12 I. C. C. Rep., 324; *Desel-Boettcher Co. v. Kansas City So. Ry. Co.*, 12 I. C. C. Rep., 220.

As was said in *Bovaird Supply Co. v. A., T. & S. F. Ry. Co.*, 13 I. C. C. Rep., 56, a system of group rating will not be disturbed or held to constitute undue preference or unjust discrimination "without proof of tangible injury resulting to the complainant." And in *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, *supra*, "Any controversy before the Commission that draws in question the reasonableness of rates to a particular common point and results in an order requiring a change of rates to that point must have a far-reaching effect. A complaint, therefore, which seeks a reduction of rates to a particular common point ought to be presented in all its aspects and receive the fullest consideration before any action is taken by the Commission."

On the per-ton-per-mile theory, Anthony, Kans., 227 miles from Muskogee, as compared with Ellsworth, 360 miles from that point, should be given the advantage which its shorter distance suggests. But none of the Kansas salt-producing points are complaining of the group rate adjustment. And, with the exception of Muskogee, none

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of the numerous points of destination covered by the blanket rate are complaining.

Since this complaint was filed the rates complained of have been changed. A difference of $7\frac{3}{4}$ cents per 100 pounds in favor of Fort Smith has been removed and Muskogee and Fort Smith have been placed upon a parity. What the final or full effect of these changes will or may be no one now knows. On the record it is not shown that Muskogee is now subjected to undue prejudice or unjust discrimination. The blanketing of the rates apparently results in a fair average rate from a large producing area to a large consuming section. No valid reason appears for differentiating Muskogee from other points to which these rates apply.

It follows that the complaint must be dismissed and it is so ordered.

17 I. C. C. Rep.

No. 2588.
CROSBY & MEYERS
v.
GOODRICH TRANSIT COMPANY ET AL.

Submitted September 10, 1909. Decided November 24, 1909.

Carrier's agent unloaded into freight house a carload shipment which should have been delivered without additional cost at warehouse of consignees. Consignees accepted delivery at freight house, drayed shipment to their warehouse, and demanded from carrier refund of sum equal to cost of such drayage; *Held*, That consignees should have insisted upon the proper delivery provided for in carrier's tariff, and that the Commission is without authority to order or sanction refund in the case.

Crosby & Meyers, for complainants in person.

Charles B. Hopper, for Goodrich Transit Company.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On June 12, 1906, complainants forwarded from Kewaunee, Wis., to themselves, care of Merchants' Ice & Cold Storage Company, Louisville, Ky., one shipment of cheese weighing 25,440 pounds, and an aggregate charge of \$80.87, at a rate of 30 cents per 100 pounds, was collected thereon. At the time the shipment was made complainants arranged to have it delivered to the warehouse of the Merchants' Ice & Cold Storage Company at Louisville, but through error of an agent at Chicago of defendant Cleveland, Cincinnati, Chicago & St. Louis Railway Company shipments for other consignees were loaded into the same car, and the agent at Louisville unloaded the entire carload at the freight house. Defendant Cleveland, Cincinnati, Chicago & St. Louis Railway Company admits that the shipment should have been delivered at the warehouse of the Merchants' Ice & Cold Storage Company without extra charge, and that it refused such delivery because its agent there misunderstood the obligations of the carrier as set forth in its published tariffs. The refusal of the defendant to

the carrier's warehouse necessitated compensation for the service it was compelled to render in which no reparation is asked. At the time the carrier moved the car in effect a tariff which provided for the payment of a switching charge of \$2 to the warehouse of the Merchants and Minors Storage Company at Louisville. The charge is estimated upon the proceedings without testimony, briefs or argument.

On April 3, 1908, the Commission received a letter from complainant setting forth its complaint. The matter was called to the attention of the carriers existing in the agency and forwarding to the Commission by the Merchants and Minors Storage Company, Chicago & St. Louis Railway Company, for authority to make refund, based on the error of its agent. This request was declined for the following reason:

A claim presented almost exactly the same question was acted upon by the Commission some months ago. The ruling then made took into consideration the fact that but for the negligence and carelessness of a railroad agent the expense of drayage would not have been taken upon the shipper. It seemed to the Commission, however, that the shipper must have been conversant with his undoubted rights under the tariffs to have delivery made at his private siding. The requirements of the law that the tariffs be strictly adhered to by all the parties is as binding upon the Commission as it is upon the carriers and shippers; and there is no authority in the law to sanction a deviation from the published rates by any carrier except where the facts, if shown in a contested case, would justify the Commission in making a positive order of reparation for damages. It seems to the Commission that a practice to the effect that a shipper may at any time waive the obligations of a carrier fully to perform its legal duty and may then call upon the Commission for relief would gradually lead to the annihilation of all tariff requirements. As was said in the case above referred to, the shipper ought to have insisted upon your company completing the transportation in accordance with the published schedules. The law makes it clear that the rules and rates of such schedules shall be strictly adhered to, and we are decidedly reluctant to assume to ourselves the power to set aside the plain commands of the statute. For these reasons we must decline to take favorable action upon your application for authority to refund in this case.

The case above referred to was one in which, because other freight had been loaded in the same car, the carrier's agent unloaded at the freight house a full minimum carload of bolts and nuts which, under the tariff, should have been switched to the warehouse of consignee without additional cost. Consignee accepted the shipment at the carrier's freight house, hauled it to his warehouse with teams, and demanded from carrier refund equal to the cost of such drayage.

In both cases the shippers had the right to refuse to accept the shipments at the carriers' freight houses and to demand delivery at the proper tracks and warehouses. That might have necessitated the car-

rier's agent again loading into the car the freight which he had improperly and unnecessarily unloaded, but such physical exercise on his part would not transgress the law and probably would not occur the second time in the same place.

There are many instances in which, because of congestion, a carrier is unable to deliver carload freight promptly at sidings and warehouses where it should, under the tariffs, be delivered. Surely the Commission would have no right to assume to authorize the carrier to pay consignees the cost of drayage on shipments which consignees were willing to dray from other points of delivery.

We must adhere to the position taken and the views expressed in above quotation, and it follows that an order should be entered dismissing this complaint.

No. 2418.

OLYMPIA BREWING COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 2471.

SEATTLE BREWING & MALTING COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted September 13, 1909. Decided November 24, 1909.

Rental charge of \$5 per car on shipments of beer from Olympia and Seattle, Wash., to points in California, Nevada, and Arizona, declared unreasonable and unjustly discriminatory. Reparation awarded.

William A. Greene for complainants.

George T. Reid and *Charles Donnelly* for Northern Pacific Railway Company.

John W. Roberts and *J. C. Campbell* for Tonopah & Goldfield Railroad Company.

F. C. Dillard, *P. F. Dunne*, *C. W. Durbrow*, and *W. H. Bogle* for Southern Pacific Company, Maricopa & Phoenix Railroad Company, and Nevada & California Railway Company.

REPORT OF THE COMMISSION.

• **CLARK, Commissioner:**

These cases were heard together, and, as they involve the same question, will be considered in one report.

The petition in case No. 2418 was filed April 28, 1909, and alleges that between August 28, 1906, and February 5, 1909, complainant shipped from Olympia, Wash., to various points in the state of California 141 cars of beer, on which, in addition to the lawful tariff rate for transportation, defendants exacted \$5 upon each of said cars as rental. It is also alleged that defendants did not exact, except at Portland, Oreg., a like charge, or any rental charge whatsoever, from

other competing brewing companies not located at Puget Sound points, thereby subjecting complainant to unjust discrimination and giving to such other shippers undue preference.

The petition in case No. 2471 was filed May 12, 1909, and is similar to that in No. 2418, except that the shipments were from Seattle to various points in Nevada, Arizona, and California, and the number of cars is 887. Reparation for the full amount of the rental charge on each car shipped is asked in both cases.

Defendant Northern Pacific Railway Company answering in both cases admitted the shipments and the exaction of the rental charge of \$5 per car. It also admits that it did not, during said time, make a like rental charge on such cars against companies not located at Puget Sound points, for the reason that the owners of the cars did not require payment of such rental charge on them when loaded from points other than Puget Sound points. It, however, denies that the rental was unjust or unreasonable or in violation of the act, and states that the rental charge collected from complainants was paid over in full to the Armour car lines. It states that previous to the time tariffs containing provision for the imposition of rental charge became effective complainant had paid a like rental charge directly to the Armour car lines.

Defendants Southern Pacific Company, Maricopa & Phoenix Railroad Company, and Nevada & California Railway Company deny that the act has been violated in any particular whatsoever.

At the hearing both complaints were amended to include additional cars shipped within two years from the dates on which the complaints were filed.

While there is here no complaint against the transportation rates on beer in carloads between the points of shipment, the amount of the rate is of interest in connection with the difficulty which the complainants had in having cars furnished to them, for the reason that defendants contend that the rate is abnormally low, forced by water competition, and defendant Northern Pacific Railway Company states that that rate did not and does not justify it in permitting its own cars for such traffic to go off its line.

Complainants stated in the testimony that when they commenced shipping beer to California, Nevada, and Arizona points the rate was 28 cents per 100 pounds, but the Commission is unable to verify this from its records. On June 1, 1905, the rate from Seattle to San Francisco was 35 cents per 100 pounds and, effective May 7, 1906, it was reduced to 30 cents per 100 pounds. During the period from May 7 to July 23, 1906, it appears that there were two conflicting rates on file, one of 30 cents and one of 35 cents. The 30-cent rate remained in effect until May 11, 1908, when it was advanced to 35 cents. Statement was made in the testimony to the effect that

some of the above-mentioned rates applied "between"—that is, north as well as south bound—but the records of the Commission do not verify the testimony in that respect. It is, however, understood that defendants reduced the rate from Puget Sound points to San Francisco because it was higher than the rate from San Francisco to Puget Sound, and that, finally, the rates were made the same in both directions, excepting the rental charge here complained of.

The Northern Pacific Railway Company did not consider that the rate on beer to southern points was sufficient to justify the use of its refrigerator equipment beyond its own rails, as it had not more than enough to supply its own needs. Therefore complainants being unable to secure equipment from the Northern Pacific and the Southern Pacific had not sufficient cars to meet their growing trade.

Complainant Seattle Brewing & Malting Company found it impracticable to provide its own cars and ship its products therein, for the reason that defendant Southern Pacific Company had an exclusive arrangement with the Armour car lines and would not haul complainant's equipment and pay mileage thereon. Complainant therefore entered into an arrangement with the Armour car lines for the furnishing of the necessary equipment. There is indication in the record to the effect that this equipment was originally furnished without extra rental charge, but subsequently a continuance of the arrangement was made dependent upon complainant's paying an extra rental charge of \$5 per car per trip. Although protest was made against this charge for the use of refrigerator cars it was continued.

When the amended act to regulate commerce became effective, requiring the incorporation in tariffs of provision for any charges which in anywise changed, affected, or determined any part of the aggregate of transportation rates, defendants, on request of the Armour car lines, incorporated in their tariffs provision for the assessment of \$5 per car rental on Armour cars, effective August 31, 1906. On March 21, 1908, similar provision was made for rental charge on Pacific Fruit Express Company cars. Therefore complainants, between March, 1907, and March 21, 1908, were not charged such rental on Pacific Fruit Express cars, which were not owned by the Armour car lines. Subsequently complainants wrote the Commission in regard to the assessment of rental charge on refrigerator cars furnished by car line companies, and through the instrumentality of the Commission and the cooperation of the carriers the provision for the assessment of such charge was eliminated from defendants' tariffs on February 5, 1909.

In addition to the rental arrangement which the complainant Seattle Brewing & Malting Company had with the Armour car lines, it leased from that company 25 Ranier Express Company cars, for

which it paid \$17.50 per month per car. The Armour Company collected mileage on these cars from the railroad companies and credited the amount of such mileage to complainant under the lease. These Ranier Express Company cars were condemned by the Northern Pacific Railway Company in November, 1907.

After August 31, 1906, when provision for the assessment of the \$5 rental charge per car per trip was incorporated in defendants' tariffs, complainants paid said charge direct to the Northern Pacific Railway Company, or it was collected by the delivering line. No portion of such charge, however, was retained by the defendants, it being paid over to the car lines company.

It is clear from the record in these cases that complainants were unable to secure from the transportation companies the cars necessary for through shipments to points of destination. The Northern Pacific line ends at Portland, and it would not permit its refrigerator cars to go off of its lines with this traffic. Complainants secured some cars which had been loaded with fruit and vegetables from California, but not in sufficient number to meet the demands of their business, and were compelled to seek equipment from some one, the carriers not having performed the duty of providing same.

The rental charge on the cars was an unusual and arbitrary one and was not exacted from brewing companies competitive with complainants and not located at Puget Sound points. In other words, it appears that complainants were without option in the matter. If they desired to continue in business they were compelled to have cars in which to move it. They were unable to secure cars in any other way and therefore submitted to the rental charge.

On the record, the Commission is of the opinion that the \$5 rental charge, during the time it was incorporated in defendants' tariffs, was unjust, unreasonable, and unduly discriminatory, and that complainants are entitled to reparation on all shipments moving within two years prior to the date on which petitions were filed and upon which such rental charge was collected.

The complainants may prepare and serve upon the defendants detailed statements of cars shipped during the time that defendants' tariffs contained requirements for the rental charge and within two years immediately prior to dates of filing complaints. When such detailed statements have been served upon the defendants and checked by them, the Commission will enter orders for the payment of such sums as the parties agree upon as due under the findings herein. The cases will be held open for such further proceedings as may be necessary in the matter of reparation.

No. 2822.

ELLSWORTH PRODUCE COMPANY

v.

UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted under C. P. S. Decided November 23, 1909.

A rule in Western Classification providing that each bundle or piece in a less-than-carload shipment must be "plainly and indelibly" marked so as to show the name of the consignor and the station, town, or city, and the state to which it is destined or take a rate one class higher is sufficiently complied with by the marks "H. Prod. Co., Butte, Mont.," when it appears that cases of eggs so marked were accepted by the defendants without protest and promptly delivered by them to the Henningsen Produce Company at Butte, in the state of Montana, as intended, without delay, embarrassment, or extra labor, so far as appears from the record. Reparation awarded.

Applicant J. C. Harrison for complainant.

Respondents J. C. Dillard, N. H. Lewis, and P. L. Williams for defendants.

REPORT OF THE COMMISSION.

HARTMAN, Commissioners:

On February 11, 1909, the complainant delivered to the Union Pacific Railroad Company at Ellsworth, in the state of Kansas, 121 cases of eggs weighing 6,413 pounds. The shipment was billed to Butte, in the state of Montana. The Oregon Short Line Railroad Company, the delivering carrier at Butte, demanded and collected charges to the amount of \$2.25 per 100 pounds. It is alleged that this rate was unreasonable and unjust to the extent that it exceeded \$1.00 per 100 pounds and that complainant is entitled to reparation in the sum of \$22.45. The case was submitted on complaint and answer.

The published rate applicable to shipments in less-than-carload lots of eggs in cases between the points involved is \$1.90 per 100 pounds. It appears that the Oregon Short Line exacted the higher charge on the sole ground that the tags on each case of eggs were not marked in the name of the receiving company in full, but were marked by initials. This was the only reason assigned by that carrier in justification of the charges that it required the complainant to pay.

17 I. C. C. Rep.

The rule in the western classification with respect to the marking of merchandise offered for transportation provides that each bundle or piece in a less-than-carload shipment must be "plainly and indelibly" marked, showing the name of the consignee, and the station, town, or city, as well as the state, to which it is destined. There is a provision that freight not marked in accordance with those requirements will be rated one class higher than the rate it would otherwise take. Since the date of the shipment the rule has been changed. It now provides in substance that unless packages are plainly and indelibly marked so as to show the name of the consignee and the details of their destination they will not be received for transportation. In that form the rule is without objection. It is the undoubted right of a carrier to decline to receive for transportation any merchandise not so marked. But a rule that increases the rate for the carriage of merchandise not marked plainly and indelibly is of doubtful validity. As a practical matter shippers in their own interest ought to mark their packages plainly, and carriers ought not to be compelled to accept shipments not so marked; but if a package is marked sufficiently to be understood by the carrier and to enable it to make proper delivery, it does not seem to us that the shipment ought to take a higher rate simply because the name, station, and state are not spelled out at length and in full.

It is not necessary, however, to decide that question in order to dispose of this complaint. The application to the shipment in question of the rule then in effect is justified by the delivering carrier defendant on the ground that the cases of eggs comprising the shipment were each marked "H. Prod. Co., Butte, Mont." But the manner in which they were marked seems not to have resulted in any embarrassment to the defendants or in any confusion or delay in making delivery of the shipment at the right destination and to the proper consignee. The marking was intended to mean "Henningsen Produce Company, Butte, Montana;" and as the cases were received by the initial carrier without protest in regard to the manner in which they were marked, and were properly delivered by the carrier at destination without delay, it is fair to infer that the marking was sufficiently clear to be understood by the defendants. We are therefore of the opinion that the rule was substantially complied with, and we so find. It results that there was an overcharge in the amount demanded which ought to be refunded to the complainant, with interest thereon; and an order to this effect will be entered.

No. 1720.
CONTACT PROCESS COMPANY
v.
NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY
ET AL.

Submitted June 4, 1909. Decided November 23, 1909.

In the absence of a published specific through rate between two points, the tariff indicating no specific way of making up a through rate, the lowest combination of local rates over the route of the movement is the lawful through charge. On the record it is therefore *Held*, That the combination of three local rates between the points in question was the lawful rate to be collected and not the sum of two local rates which made higher. Reparation awarded.

Cox, Kimball & Stowe for complainant.

John H. Clarke for New York, Chicago & St. Louis Railroad Company.

Martin L. Clardy and *James C. Jeffery* for Missouri Pacific Railway Company.

Clarence Brown for Toledo, St. Louis & Western Railroad Company.

E. B. Peirce and *T. W. Parker* for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Upon a tank car of sulphuric acid, weighing 59,720 pounds, shipped on February 20, 1908, from Buffalo, in the state of New York, and destined to Tulsa, in the state of Oklahoma, charges amounting to \$507.62 were assessed and collected, based upon a local rate of 20 cents per 100 pounds from Buffalo to East St. Louis, and a joint through rate of 65 cents per 100 pounds from East St. Louis to Tulsa, which since the date of the shipment has been reduced to 30 cents. There was then in effect over the route of the movement a local rate of 10 cents per 100 pounds from East St. Louis to Kansas City and also a local rate of 20 cents from Kansas City to Tulsa, making a through charge of 30 cents per 100 pounds from the Mississippi River

to destination, and consequently a combination through rate of 50 cents per 100 pounds from the point of origin to destination.

Upon these facts and under the authority of rule No. 5-C of Tariff Circular No. 17-A, which provides—

If no specific rate from point of origin to destination of a through shipment is provided, and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment—

we find that there was an overcharge of 35 cents per 100 pounds upon this shipment, amounting in the aggregate to the sum of \$209.02, in which amount the complainant is entitled to reparation. We express this conclusion upon the understanding that the defendant carriers had not provided in their tariffs that the through rate from Buffalo to Tulsa would be made by adding the locals, or proportionals, to and from the Mississippi River, or other basing point. In the absence of such a rule in the joint tariffs, there being no specific joint through rate from Buffalo to Tulsa, it was the duty of the defendants to apply the lowest combination of lawfully published local rates that could be made between the points in question over the route taken by the shipment; and the lowest combination was the sum of the three locals, and not the sum of the two local rates into and out of East St. Louis.

An order for reparation, with interest, will be entered against the carriers west of the river in accordance with these findings.

17 I. C. C. Rep.

No. 2862.

EDWARD G. DAVIES

v.

ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted November 15, 1909. Decided November 25, 1909.

The claim of the complainant that, under the opinion and order of the Commission in *Wholesale Fruit & Produce Association v. A., T. & S. F. Ry. Co.*, 14 I. C. C. Rep., 410, it is the duty of the defendant to make delivery of consolidated shipments to the various owners is not sustained. Complaint dismissed.

Edward G. Davies for complainant in person.

Blewett Lee for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

In No. 1467, *Wholesale Fruit & Produce Association v. A., T. & S. F. Ry. Co.*, 14 I. C. C. Rep., 410, the Commission entered an order, of which one paragraph was as follows:

That the said defendants may maintain in effect for not more than two years from October 1, 1908, in the city of Chicago, a charge not exceeding 1 cent per 100 pounds for removing from the car to their station platforms or depots, and distributing in lots to the various owners consolidated interstate carloads of fruits and vegetables in packages, where said defendants actually unload and assort such packages on their respective freight platforms or depots, at the request or with the consent of the consignee.

In pursuance of this order the defendant filed a tariff providing a charge of 1 cent "for removing consolidated carload shipments in packages from the cars to the station platforms or depots and assorting the property for distribution to the owners." The complainant called the attention of the Commission to this tariff, claiming that it was not in accordance with the order, in that the tariff provided for the removal and assorting of packages for distribution while the order provided that the charge should only be imposed where the goods were assorted and distributed. This claim of the complainant

being called to the attention of the defendant a new tariff was filed, following the exact language of the order, and such a tariff is now in effect. The complainant claims that the first tariff was illegal, and that the service rendered under the present tariff does not fulfill the statement in the tariff itself.

The complainant is a receiver of consolidated carloads of fruits and vegetables. The fruits and vegetables which are brought to Chicago from various points south of the Ohio River are mainly produced by small farmers. No one individual has for shipment a whole carload. These fruits and vegetables are usually sold to different commission merchants in Chicago, and while it frequently happens that the same dealer may receive from a single shipping point an entire carload, still a large part of the movement is in less-than-carload consignments. For the purpose of obtaining the benefit of the carload rate, which is lower than the L. C. L. rate, the shippers in the south have formed shipping associations. The members of these associations at a given station bring in their individual packages and put them into a car, which, when loaded, is shipped by the association as the consignor. The different packages in the car are intended for several different dealers in Chicago and are marked with the name of dealer; perhaps also with the name of the member of the association to whom they belong and from whom they come. In order to obtain the carload rate it is necessary that this carload be consigned to a single consignee, and the complainant acts as such receiving agent.

When the car arrives at Chicago the different packages must be taken out of it and delivered to the commission merchants to whom they are directed. The amount of this traffic is large; the cars usually arrive at Chicago during the night, and the dealers desire to receive their consignments early in the morning, usually before 7 o'clock. In order to unload and deliver these various consolidated carloads it is absolutely necessary that the work be done at some platform provided by the railroad and that the packages be handled from the cars by the railroad employees. This is not only the cheapest, but is the only practical method in which this business can be conducted in the congested districts of Chicago. For some years previous to our decision in the original case this traffic had been taken out of the cars by the employees of the railroad and assorted into piles belonging to the different commission merchants, who sent their drays to this fruit platform and then received their goods. Each carload was receipted for by Mr. Davies as consignee, who, in turn, took receipts from the various individuals for whom the packages were actually intended.

The purpose of the complaint in No. 1467 was to compel carriers in the city of Chicago to continue the custom of bringing to the car

door packages of fruits and vegetables and there making delivery to the consignee. The Commission held that where the carload was consigned to a single individual who was also the owner of the entire carload, and where, therefore, delivery was made upon the team track, the carrier should continue to bring the packages to the car door without additional charge; but it was of the opinion that in case of those consolidated shipments where delivery could not be made upon the team track, but must be at a platform or depot provided for that purpose, where in the nature of things, the consignee could not receive the packages at the car door, but must have them assorted for delivery to his customers upon the platform, an additional charge of 1 cent per 100 pounds might be made.

These shipments are consigned to the complainant. The complainant receives his compensation for splitting up these carloads and making delivery to the various commission men for whom they are actually intended. He must in the conduct of that business supervise the delivery to these commission merchants and take from them receipts showing that he had made the proper use of the shipments consigned to him from southern points. What the defendant is now doing is exactly what it has always done and exactly what the Commission supposed would be done under its order. That order does not require the defendant to *deliver* to the various owners; it simply requires it to *distribute* these shipments.

It was and is the opinion of the Commission that this business could best be done in this manner. The service rendered by the defendant in providing a place where these consignments can be handled and in assorting into lots the packages marked with the names of the several dealers to whom they are consigned is a thing of value to the shipper for which the shipper may properly be required to pay. Unless this was done the complainant would find it impossible to conduct his business. While it might be of some advantage to the complainant if the defendant were required to check off these packages when taken away by the various commission merchants, it would, in our opinion, impose a burden out of all proportion to the benefit conferred, since the complainant would still be under the necessity of making the same check himself.

The claim of the complainant that under the opinion and order of the Commission it is the duty of the defendant to make delivery to these commission men is not sustained, and the complaint will be dismissed.

No. 2048.

MINNEAPOLIS THRESHING MACHINE COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAIL-
WAY COMPANY ET AL.

Submitted May 29, 1909. Decided November 24, 1909.

The complaint that the cancellation of joint tariffs had resulted in unreasonable rates on threshing machines and engines from Hopkins, Minn., to local points on the lines of defendants, and that rates on agricultural implements from Hopkins to various points in states west and south are unreasonable, not being sustained by the evidence, is dismissed.

James Manahan for complainant.

James B. Sheehan and *Richard L. Kennedy* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

Complainant is a Minnesota corporation, engaged in the manufacture of threshing machines and engines at Hopkins, Minn. Hopkins is about 3 miles south of the city limits of Minneapolis and 15 miles from Minnesota Transfer. The plant is reached by the Minneapolis & St. Louis, the Chicago, Milwaukee & St. Paul, and the Great Northern railroads. It is situated 8 miles from the yards of the Minneapolis & St. Louis and 9 miles from the yards of the Great Northern, in the city of Minneapolis. By a joint tariff effective April 30, 1903, the Chicago, St. Paul, Minneapolis & Omaha (hereinafter called the Omaha Company) with the Great Northern, gave Hopkins the Minneapolis rate to all points on its line. February 27, 1906, the Omaha Company issued a tariff in connection with the Great Northern which gave Hopkins the Minneapolis rate to all points on its line and the lines of the Chicago & North Western. Similar joint rates were made in 1907 with the Minneapolis & St. Louis. January 10, 1909, the joint-rate tariffs were canceled to all noncompetitive points on the lines of the Omaha Company, the Chicago & North Western, and Minneapolis & St. Louis. The joint rates are still effective to competitive points on those lines.

It is alleged by complainant that the cancellation of the joint tariffs has resulted in unreasonable rates on threshing machines and engines from Hopkins to local points on the lines named. It is also alleged that rates on agricultural implements from Hopkins to various points in states west and south are unreasonable.

When complainant's plant was located at Hopkins, some eighteen years ago, the Minneapolis & St. Louis, the Chicago, Milwaukee & St. Paul, and the Great Northern guaranteed it a switching rate of \$5 per car to Minneapolis. This rate is now in effect. The Northern Pacific, Chicago, Burlington & Quincy, and the Chicago, Rock Island & Pacific have no joint rates to Hopkins and do not directly or indirectly absorb this switching charge from that point to Minneapolis. The Soo Line, Chicago Great Western, and Wisconsin Central absorb the switching charge between Hopkins and Minneapolis, on condition that the net revenue on each shipment is \$15 per car or more. There are eight concerns within the switching limits of Minneapolis engaged in shipment of threshing machines and engines in competition with the complainant. Shipments of these companies are made from warehouses situated at different points. There is none of them engaged in the manufacture of the commodities they ship at Minneapolis. The companies and the amount of the switching charge which they pay for the transportation of shipments to the rails of the Omaha Company are as follows:

Aultman-Taylor Company.....	\$1.50
Huber Manufacturing Company.....	3.00
Buffalo Pitts Company.....	1.50
Nicols & Sheppard	2.00
Advance Threshing Machine Company.....	3.00
Reeves & Co.....	3.00
J. I. Case.....	3.00
Gelser Manufacturing Company.....	3.00

These charges are based on the distances of the respective plants from the rails of the Omaha Company, and each of them ship under substantially the same conditions as the complainant, with the single exception that the commodities are not manufactured at these plants.

It is contended by the Omaha Company that the cancellation of joint tariffs, which in effect absorbed the switching charge from Hopkins, was fully justified under the conditions existing at that time, and those conditions prevail to the present time. It is stated that after the passage of the Hepburn Act, and in conformity with the rules of the Commission with respect to the publication of all switching and terminal charges, the Omaha Company went over its tariffs, separating the terminal charges as required, and eliminated so far as possible all undue discrimination. The defendant issued a tariff effective October 1, 1906, and at that time, through an over-

sight, it failed to cancel the absorption of switching charges on business to noncompetitive points covered by its joint tariff to Hopkins, and for the purpose of correcting that oversight it issued its supplement, as above stated, effective January 10, 1909. It is pointed out that from October 1, 1906, to January 10, 1909, Hopkins was the only place in and around Minneapolis from which the defendant absorbed switching charges to noncompetitive points. No other place on its line has had such an advantage under any tariff on any commodity since October 1, 1906. It is insisted that the complainant prior to January 10, 1909, had an undue advantage over the other dealers in machinery at Minneapolis, and over all other shipments of other commodities on the lines of defendant to noncompetitive points. The contention is that the cancellation of these tariffs has placed the points on an equality and eliminated the discrimination in favor of Hopkins.

It is further argued that no reason exists why the complainant should secure without charge a service greater than that given to other dealers in machinery at Minneapolis and for which they are required to pay \$1.50 to \$3 per car.

The evidence shows that 63 per cent of the complainant's shipments required two cars, and the \$5 charge from Hopkins to the Omaha line covered the switching of the two empty cars for Hopkins and two loaded cars for Minneapolis, and that in comparison with the switching charges in Minneapolis generally and with other points throughout the country those to Hopkins could not be reasonably less than \$5 per car.

Complainant contends that inasmuch as the switching charge was absorbed to all points on the Omaha road and the Chicago & North Western for five years next preceding the filing of the complaint the cancellation thereof was unjust. The basis for its claim for the maintenance of the joint tariffs is chiefly that consideration.

Under these circumstances we can see no reason why the complainant should secure rates by means of these joint tariffs lower to noncompetitive points on the lines involved than from competitive plants situated nearer to Minneapolis. The \$5 charge for switching from Hopkins to Minneapolis appears to be reasonable, and unless we are prepared to place Hopkins on the Minneapolis basis for all business, both in and out bound, not only on the Omaha road and the Chicago & North Western, but also all other carriers reaching Minneapolis, we are forced to sustain the carriers in this case in canceling a tariff which appears to have operated to discriminate between shippers of the same traffic. If we were to order the republication by the Omaha Company of its joint tariffs from Hopkins to all local points on its lines and the lines of the Chicago

& North Western there no doubt would arise discriminations more serious which would call for a readjustment in the entire switching charges now existing between all points contiguous to Minneapolis. So far as appears complainant is now being subjected to reasonable switching charges and is on a substantial equality in this respect with all competitive shippers from Minneapolis.

With respect of the allegation that the application of Class A rates on agricultural implements generally from Hopkins to various western and southern points is unreasonable, it is to be observed that no sufficient evidence was submitted to establish that fact. Some comparative tables were submitted, and the earnings of the Omaha Company as shown by reports filed with the Commission are also filed to demonstrate that this road could reduce its rates on agricultural implements without seriously impairing its revenue. This character of evidence with reference to a particular traffic, without taking into consideration the circumstances surrounding it and the circumstances and conditions surrounding shipments from other and competitive points, standing alone has little value and certainly forms no basis upon which we can determine that the rates in controversy are unreasonable.

For the reasons above given, the complaint will be dismissed.

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No. 2517.

DAVENPORT PEARL BUTTON COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted September 7, 1909. Decided November 24, 1909.

Rate of 17 cents per 100 pounds on mussel shells in carloads from Terre Haute, Ind., to Davenport, Iowa, found unreasonable to the extent that it exceeded 15 cents per 100 pounds. Reparation awarded.

J. E. Krouse for complainant.

Chester M. Dawes for Chicago, Burlington & Quincy Railroad Company.

J. G. Williams for Vandalia Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

On February 1, 1908, the Commission received a letter from complainant, stating that on three carloads of mussel shells from Terre Haute, Ind., to Davenport, Iowa, moved in August, 1906, defendants, common carriers amenable to the provisions of the act to regulate commerce, sought to collect charges at the rate of 17 cents per 100 pounds. Informal adjustment was not had, owing to declination of Vandalia Railroad Company to join its codefendant in application to the Commission to award special reparation to complainant; therefore formal complaint was filed. The petition alleges that prior and subsequent to shipments the rate between Terre Haute and Davenport was and is 15 cents per 100 pounds, and reparation, based on the difference between the charges under the 17-cent rate and what the charges would have been under the rate of 15 cents, is asked. The aggregate weight of the three shipments was 211,000 pounds, the total charges were \$358.70, and the amount of reparation claimed is \$42.20.

It appears that on the dates of these shipments the rate applicable thereto was sixth-class rate governed by Official Classification, 17 cents per 100 pounds. No through commodity rate was then in effect via any route, but on December 4, 1906, the defendant Vandalia Railroad

Company issued a commodity rate of 15 cents per 100 pounds applicable via its line and that of the Chicago, Rock Island & Pacific Railway Company, and on December 15, 1906, it was made applicable via the line of defendant Chicago, Burlington & Quincy Railroad, and is at this time in effect.

Defendant Chicago, Burlington & Quincy Railroad Company admits the class rate to have been unreasonable and expresses a willingness to join its codefendant in making reparation to the complainant in the sum prayed, submitting the case for such order as the Commission may see fit to enter.

Defendant Vandalia Railroad Company admits the shipment; states that it is informed and believes that its codefendant collected freight charges thereon at the rate of 17 cents per 100 pounds, but alleges that all of the cars were billed by it from Terre Haute to Peoria at its proportion of a through rate of 15 cents from Terre Haute to Davenport; that it received only 7.8 cents per 100 pounds, its proportion of the 15-cent rate, and that it has not participated in any way in the additional 2 cents per 100 pounds collected. It states that the 15-cent rate was applied to the shipments on the erroneous theory that the rate from Vincennes, Ind., to Davenport, Iowa, was 15 cents, and Terre Haute being an intermediate point, the 15-cent rate could be applied from that point.

It admits, in view of the circumstances, that the 17-cent rate was unjust and unreasonable, consents to reparation being ordered, but submits that the award should run against its codefendant. It consents to the cause being submitted on the pleadings.

It is somewhat difficult to understand why a carrier should decline to make application for informal adjustment, and thus compel complainant to file formal complaint, and then, by answer and stipulation, admit the allegations and agree to submission of the case on the pleadings.

On the record in this case, the Commission is of the opinion that the 17-cent rate was unjust to the extent that it exceeded the subsequently established commodity rate of 15 cents per 100 pounds, that the rate for the future should not exceed 15 cents, and that the complainant is entitled to reparation in the sum of \$42.20, with interest. Such an order will be entered.

There is no stipulation that the order shall run only against defendant Chicago, Burlington & Quincy, and, therefore, the order will be entered against the defendants which participated in the transportation of the shipments and in the earnings thereon. It is for those defendants to arrange between themselves, according to their established rules, the division of the earnings and of the reparation here awarded.

No. 2830.

VAN BRUNT MANUFACTURING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted September 8, 1909. Decided November 24, 1909.

Rate of 20 cents per 100 pounds on agricultural implements in carloads from Horicon Junction, Wis., to Minnesota Transfer, Minn., found unjust and unreasonable to the extent that it exceeded the rate of 17 cents per 100 pounds in effect prior and subsequent to dates on which shipments were made. Reparation awarded.

W. A. Van Brunt for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

W. L. Martin for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

W. W. Broughton for Great Northern Railway Company.

J. B. Baird for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Between January 20 and February 27, 1909, complainant shipped 42 carloads of agricultural implements, aggregating in weight 1,130,132 pounds, from Horicon Junction, Wis., to various points in Minnesota and North Dakota via the lines of the defendants. The rates charged on these shipments were in each instance combination rates based upon Minnesota Transfer. No complaint is made as to the rates beyond the Transfer. It is alleged that the rate of 20 cents per 100 pounds from Horicon Junction to Minnesota Transfer, in effect on the dates upon which these shipments moved, was unjust and unreasonable to the extent that it exceeded the rate of 17 cents per 100 pounds which was in effect prior and subsequent to the movement of the cars in question. The entire movement from Horicon Junction to Minnesota Transfer was via the lines of the defendant Chicago, Milwaukee & St. Paul Railway Company, and the other defendants were made parties to the complaint because they participated in the through transportation. Reparation in the sum of \$339.04 is asked, based upon the difference between the amount collected on the shipments and what would have been collected at a

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rate of 17 cents per 100 pounds from Horicon Junction to Minnesota Transfer.

Defendants admit the allegations of the complaint relative to the movement of the shipments, the charges collected upon the same, and concerning the tariffs. They stipulate the determination of the case upon the pleadings; waiving hearing, filing of briefs, and argument. The defendant Chicago, Milwaukee & St. Paul Railway Company shows that an order of reparation, if made, should be directed against it alone by reason of the fact that the rate complained of applied wholly to the transportation of the shipments upon its lines.

The tariffs on file with the Commission show that a commodity rate of 17 cents per 100 pounds on agricultural implements from Horicon Junction to Minnesota Transfer was effective via the line of the Chicago, Milwaukee & St. Paul Railway from February 21, 1899, until November 10, 1908. Another tariff of the same defendant, effective October 23, 1905, carried a commodity rate of 20 cents per 100 pounds between the same points and on the same commodity. This tariff also remained in effect until November 10, 1908. Effective November 21, 1908, another tariff restored the commodity rate of 20 cents. Therefore between October 23, 1905, and November 10, 1908, this defendant had in its tariffs conflicting rates of 17 cents and 20 cents applicable on agricultural implements between the points named and had no rate in effect between November 10 and 21, 1908. It should be noted, however, that the rate of 17 cents was first established and that it was not canceled until November 10, 1908, upon which date the rate of 20 cents was also canceled. The 20-cent rate remained in effect from November 21, 1908, to March 1, 1909, when the rate of 17 cents again became effective.

The defendants have made no admission that the 20-cent rate was unreasonable. They have admitted the shipments, the charges thereon, and the allegations concerning the tariffs. They had the opportunity to be heard further, but waived that right. They have not suggested any circumstance or condition which would tend to justify an advance in the rate for so limited a period, or at all.

On the record the Commission is of the opinion that the rate of 20 cents per 100 pounds for the transportation of agricultural implements in carloads from Horicon Junction to Minnesota Transfer was on the dates the shipments in controversy moved unjust and unreasonable to the extent that it exceeded 17 cents per 100 pounds, that for the future the rate from Horicon Junction to Minnesota Transfer should not exceed 17 cents per 100 pounds, and that complainant is entitled to reparation as prayed, with interest.

An order against defendant Chicago, Milwaukee & St. Paul Railway Company will be entered accordingly. As to the other defendants, the complaint will be dismissed.

No. 1401.

METROPOLITAN PAVING BRICK COMPANY ET AL.

v.

ANN ARBOR RAILROAD COMPANY ET AL.

No. 1528.

OHIO FACE BRICK MANUFACTURERS' ASSOCIATION

v.

ANN ARBOR RAILROAD COMPANY ET AL.

No. 1530.

NATIONAL PAVING BRICK MANUFACTURERS' ASSOCIATION

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

No. 896.

THE STOWE-FULLER COMPANY

v.

PENNSYLVANIA COMPANY ET AL.

Submitted September 3, 1909. Decided November 26, 1909.

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1. There is no transportation reason for making different rates on different grades of fire, building, and paving brick. In so far as it was held in the *Stowe-Fuller case*, 12 I. C. C. Rep., 215, that one rate should be applied to fire, building, and paving brick on shipments between the points involved, the conclusion then reached is sustained by further and more exhaustive inquiry.
 2. The Chicago-New York base rate to be applied on fire, building, and paving brick on shipments eastbound from Central Freight Association territory to Trunk Line territory should not exceed 21 cents per 100 pounds, and any charge in excess thereof is unreasonable.
 3. Under all the circumstances shown, no order for reparation is warranted.

B. S. Andrews for The Stowe-Fuller Company.

James S. Campbell and *Alvin M. Higgins* for Metropolitan Paving Brick Company and National Paving Brick Manufacturers' Association.

H. H. Henry for Ohio Face Brick Manufacturers' Association.

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C. B. Fernald and George Stuart Patterson for Pennsylvania system.

O. E. Butterfield and Clyde Brown for New York Central system.

Richard Inglis and C. O. Hunter for Hocking Valley Railroad Company and Zanesville & Western Railway Company.

W. M. Duncan and R. F. Denison for Wheeling & Lake Erie Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

These cases involve the classification of fire, building, and paving brick when transported from points in Central Freight Association territory to points in Trunk Line territory. The reasonableness of the existing rates on the three kinds of brick from and to the points named is also in question.

The attention of the Commission was first called to the classification or grading of brick for rate-making purposes in the territory described by the complaint of The Stowe-Fuller Company, filed in September, 1906. At that time fire brick was classed by itself and paving brick and building brick were placed in another class. The Chicago-New York rate on fire brick was 25 cents per 100 pounds and on the other class 20 cents per 100 pounds. These were used as base rates and were generally scaled down to intermediate points in accordance with the established percentages on eastbound traffic. On westbound traffic but one rate was and is made on brick, based substantially on the New York-Chicago rate. The Stowe-Fuller complaint attacked the classification then in force and contended that but one rate should be made for the transportation of all kinds of brick. The reasonableness of the rates was not presented or considered. On June 24, 1907, the Commission issued its report in the *Stowe-Fuller case*, 12 I. C. C. Rep., 215. It was ordered that the defendants to that proceeding be required to enforce and maintain for a period of not less than two years one rate for the transportation of fire, building, and paving brick from points in the state of Ohio to points in the states of New York and Pennsylvania. The effective date of the order was August 15, 1907. On August 1, 1907, carriers, members of the Central Freight Association, apparently decided to comply with the order of the Commission, and thereupon most of them by tariff publications announced a rate of 22½ cents per 100 pounds on fire, building, and paving brick, Chicago to New York. This rate was to apply generally from Central Freight Association points to all points in Trunk Line territory and was to be scaled down to points intermediate. Upon this announcement representatives of paving-brick manufacturers and others applied to the Commission for an extension of the effective date of its order, and on September 12, 1907, the Commission suspended the order in the

Stowe-Fuller case "until otherwise ordered." On August 14, 1907, a temporary injunction was issued by a United States district judge, restraining the interested carriers in Central Freight Association territory from putting into effect the proposed 22½-cent rate. The restraining order by its terms was to continue no longer than January 1, 1908. On January 2, 1908, the carriers put into effect the rate of 22½ cents above mentioned. On January 20, 1908, case No. 1401 was filed. In this case the reasonableness of the rates on paving brick was challenged. The complaint also prayed that the *Stowe-Fuller case* be reopened and reconsidered. Building and fire brick producers intervened, a large amount of testimony was taken, and oral argument was submitted before the Commission.

On April 22, 1908, cases 1528 and 1530 were filed. In each of these cases it is charged that the rates on paving and building brick from and to the points in question based on the 22½-cent Chicago to New York rate are unreasonable.

At the conclusion of the argument in case No. 1401 the carriers presented a classification or grading of brick which was accepted by the paving-brick representatives. It was met by a protest, however, from the fire and building brick producers. The matter was taken under advisement by the Commission, and it was determined that all the cases should be consolidated and the question of classification and rates should be disposed of in one report. The cases were set for hearing and further testimony was taken. It was agreed by the parties that the four cases should be disposed of in one report, without prejudice, however, to the right of any of them to bring other proceedings with respect of the reasonableness of particular rates between points in Central Freight Association territory and points in Trunk Line territory, or between points in either of these territories. Prior to the taking of testimony in the consolidated cases, a representative of the Commission visited the plants of leading producers of the three grades of brick in various sections of the country. He investigated the manner of manufacture, methods of shipment, and conditions generally under which the business is conducted. All the leading shippers from Central Freight Association territory to Trunk Line territory were either visited by him in person or were present at the hearing and given opportunity to present their views. Traffic officials of many of the railroads interested were visited personally and their views with respect of existing conditions obtained. The Commission has made every effort to secure exact information with a view to determining the question in accordance with the facts.

There are two questions presented: First, is there a practical classification or grading of the different kinds of brick shipped from and to the points involved to which different rates may be applied?

Second, what is a reasonable base rate, Chicago to New York, upon which rates shall be scaled to points intermediate?

In the consideration of these questions common building brick, so called, has no place. This grade of brick is produced from ordinary clay at kilns in practically every community, and moves on local rates for short distances only. There is little or no movement of common brick from any point in Central Freight Association territory to Trunk Line territory. It was agreed by all parties that any adjustment of the classification or of rates applicable thereto should not include common building brick. Enameled brick and high-class brick shipped in containers are also excluded from the adjustment here made. There are other kinds of brick, known as "corundite," "magnesite," and "chrome," which are used for refractory purposes and are of high value. They do not, however, represent over one one-hundredth of 1 per cent of the total movement of brick, and therefore are not excluded from this adjustment. Silica brick is also used for refractory purposes, and is coming into competition with high-grade fire brick. For the purposes of this report, it is properly classed as a fire brick.

We will first consider the question of classification. The suggestion of the carriers as to separation of the various kinds of brick into classes, together with the rates thereto applicable, which was presented at the argument in case No. 1401, is as follows:

Classification.	Rate base: Chicago to New York (per 100 pounds).
	Cents.
(1) Silica brick; fire brick; ladle brick; ladle linings; tuyères; mill brick (made of fire clay), no distinction to be made on mill brick according to usage, whether they come into direct contact with flame or boiler settings, settings of glass houses, iron and steel mills, etc.....	25
(2) Building brick, common or pressed; pressed face brick; paving brick or blocks, used for other than paving roads, thoroughfares, streets, alleys, and sidewalks of municipalities, towns, boroughs, counties, or townships.....	22
(3) Paving brick or blocks, to apply only on brick or blocks for paving roads, thoroughfares, streets, alleys, and sidewalks of municipalities, towns, boroughs, counties, or townships....	21

During the last hearing another suggestion was submitted by the carriers as follows:

Silica, corundite, chrome, magnesite, and fire brick to take the highest rate. Other grades of brick except paving block or brick shown to be shipped for the immediate use of the United States, state, or municipal governments, to take a lower rate, and paving block or brick when shown to be shipped for the immediate use of the United States, state or municipal governments, to take the lowest rate.

Another classification suggested by a manufacturer of fire, paving, and building brick was that No. 1, hand-made fire brick, should be in

one class and all other grades in another class. A further suggestion was made that fire brick should be classified in accordance with value—that is to say, place all fire brick valued from \$16 per 1,000 and upward in one class and all other grades of fire and all other brick in another class. It was also suggested that different rates might be made where brick are required to be packed for shipment to preserve them from damage. While it is true that classification is sometimes made with respect of the manner of the packing of articles, it is to be noted that fire brick of the highest grade are required to be packed usually in sawdust or straw to protect them from breaking. The building brick here under consideration are what are called face brick; that is, brick that are pressed so as to have smooth faces. This grade of brick is packed in straw or sawdust or other protection to preserve it from damage. Therefore it would result, if classification were to be based on method of packing, in placing the highest grade fire brick, valued at about \$18 per 1,000, in a class with face building brick, which, on the average, is valued at \$11. The higher grade might move under an advanced rate, but it is quite certain the lower would not.

It is to be remembered that the Commission found in the *Stowe-Fuller case* that the three grades of brick should not be separately classified for rate-making purposes, because there did not appear to be any transportation or other reason to justify such a classification. The defendants assert that the peculiar conditions in respect of the character and distribution of fire-clay deposits in Central Freight Association territory and the conditions of transportation to Trunk Line territory, more particularly from points in Ohio to points in New York and Pennsylvania, warrant a classification of different grades of brick for rate-making purposes, and they call attention to the fact that for many years there was such a classification. It is argued that no complaint was made by the fire-brick producers of the 25-cent Chicago-New York base rate on their product and that experience has shown that the traffic moved freely and in large volume at that rate. It is further insisted that the finding in the *Stowe-Fuller case* left the carriers no alternative but to average the rates formerly charged under the classification if their revenues were to be preserved.

It is also pointed out by defendants that while it is true that fire, building, and paving brick are placed in one class in the three great classifications of the country, the different grades are actually carried on commodity rates lower than the classifications which are made with reference to the peculiar conditions existing in each locality.

It is further asserted that there are three natural divisions of brick produced, namely, fire, building, and paving, and that the classi-

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fication first above set out would operate equitably and would be found effective if put in force to prevent misbilling and consequent benefits to one shipper over another.

The various suggestions with respect of classification were fully considered at the hearing and each met with serious objections on the part of some of the business interests involved. When taken in connection with the proposed rates, the classifications offered by the carriers were not satisfactory to any interest represented. It was pretty generally agreed that if the highest grade of fire brick, made from the best fire clay and used only where the highest degree of heat obtains in blast furnaces, could be accurately described so as to distinguish it from other grades of fire and other brick used for less refractory purposes, it might well be put in a class by itself. The evidence seems to show, however, that during a great part of the time in which fire brick were placed in a separate class by the carriers, a very large volume of certain grades of fire brick coming into competition with the highest grades moved under the lower classification. This was a hardship upon fire-brick shippers who made only the highest grades and paid the highest rate, and ultimately led to the filing of the complaint in the *Stowe-Fuller case*.

A standard No. 1 fire brick is handmade, light in color, porous, and does not bond closely. It must be packed when shipped in order that it will not break and must be placed in warehouses where it will not be subject to the elements. This grade of brick is easily distinguished from building and paving brick and does not compete with either in actual use. But there is a fire brick of equal grade made from fire clay which sells for substantially the same price and is of fine grain, hard and dense. This brick has the appearance of paving or building brick and can not be easily distinguished from them. It is actively in competition with handmade, porous brick. Both the handmade and machine-made brick are produced in three grades, selling at varying prices from \$18 down to \$10 per 1,000. No one, not even an expert, can readily distinguish between the grades. They are made of the same clay, in the same plant, frequently shipped in the same car, and quite as frequently billed to one consignee.

At many points along the Ohio River in West Virginia and at various other points in Ohio and Kentucky, so-called fire brick is made of a low grade of fire clay. Out of this clay is produced building brick, paving brick, and paving blocks. In a few plants low-grade fire brick and good building brick and paving brick are produced from the same clay and are burned at the same time in the same kiln. This so-called fire brick finds its market where brick are used which

are not required to stand the highest degree of heat, such as in boiler settings, stacks, paving around furnaces and floors of mills, building kilns, etc. Low-grade fire brick is also being used to a constantly increasing extent for purposes for which only the higher grade was formerly used. It is stated in evidence, and not disputed, that out of a movement of 600,000,000 fire brick in 1908, about one-third were sold for the highest refractory purposes, one-third for stove linings and secondary purposes, and one-third for boiler settings, stacks, kilns, etc.

Paving blocks began to be shipped from Central Freight Association to Trunk Line territory about the year 1900. These blocks are larger than ordinary brick and weigh about 9 pounds. The standard brick weighs from 6 to 7 pounds. Paving blocks are grooved and from their size and appearance can be easily distinguished from the other grades of brick. There is a considerable use of these blocks in the construction of large buildings and foundations generally and in certain sections of the country for the building of residences. This use of paving blocks for building purposes appears to be on the increase.

It is conceded by defendants that it costs no more to transport fire brick than any of the other kinds. Claims for loss and damage are nominal only and there appears to be no material difference in this respect between the various kinds of brick transported. It is well settled that in making a classification of articles, bulk, value, liability to loss and damage, and similar elements affecting the desirability of the traffic should be considered, and articles which are analogous in character should ordinarily be placed in the same class.

It is insisted by defendants that the classifications presented by them are designed to meet competitive conditions peculiar to the region directly involved. They argue that these conditions are unlike those obtaining in any other section of the country; that the situation should be considered locally; and that there might well be put into effect a classification of brick from and to the points involved without affecting the adjustment of the general traffic under one classification in all other sections of the country. Carriers, within proper limitations, may take competition into consideration in classifying freight. Competition that may be considered in proper cases not only includes that between carriers but also that of the commodity produced in one section of the country with the same commodity produced in another section and sometimes competition of one kind of traffic with another kind. Conceding that there is a peculiar situation with reference to manufacturing and shipping conditions in Ohio and contiguous

points, we are not sufficiently informed to treat that situation as a local proposition with reference to shipments to points in Trunk Line territory. Competition between the different grades of brick is of such a character that no scheme of classification is possible which will not permit, if it does not encourage, the misbidding of the product in order to secure lower rates. To a considerable extent, shipments of all brick under the classification in effect prior to August, 1906, moved at the lower rate. Shippers of brick made of low-grade fire clay which competed with fire brick of higher grades and were also used as paving or building brick, and fire brick made of pure fire clay which could not be distinguished from building or paving brick, quite frequently billed shipments under the lower classification.

It is also to be observed that the classifications proposed by defendants rest to a considerable extent upon the use to which the product is to be put after it is sold. This would lead to much hardship to many shippers and constitutes a basis of classification which the Commission has for obvious reasons refused to sanction.

The paving-block interests insist that their product should be placed in a class by itself. It is asserted that shipments to eastern points are required to meet competition with asphalt, cedar block, bitulithic, and other paving material, and that except on the very lowest rate the traffic will not move in good volume. It is further argued that the paving block used for paving streets, alleys, and roads is noncompetitive with the other grades. As has been stated, there is a large use, which is on the increase, of paving block for building purposes. To meet this condition the paving interests suggest a classification limited to paving brick and block for the immediate use of United States, state, or municipal governments. So far as the use of paving blocks or brick for the use of the United States, state, or municipal governments is concerned, reference is made to section 22 of the act to regulate commerce which gives the carriers the right to transport traffic for the above-named authorities at reduced rates if they see fit to do so. This can be done notwithstanding the conclusion reached in this case. What carriers may do is one thing and what they ought to be required to do is quite another thing. Certainly the Commission has no power under the law to order carriers to transport traffic for the United States, state, or municipal governments at reduced rates. Furthermore, it is a matter of common knowledge that the United States, state, and municipal authorities rarely lay pavements themselves. Work of this kind is usually let by contract. We know of no reason why lower rates should be made for contractors of brick paving than should be made in favor of any other party who may have contracts for other work for public authorities.

We find that there is no transportation reason for making different rates on different grades of fire, building, and paving brick. The average value of the highest grade of fire brick is about \$18 per 1,000. The average value of the other grades of brick is about \$10. Could the highest grade of fire brick be accurately described so that it might be easily distinguished from fire or other brick of a lower grade and value it may well be claimed that a higher freight rate should be charged on this grade than on the other grades. The evidence shows that this particular grade will move freely under a higher rate than will permit the free movement of the lower grades. We have seen, however, that there is no possible description of high-grade fire brick which will even reasonably insure that only that grade would be included. In other words, no phraseology has been found for defining first-grade fire brick of high value which would not also describe and include brick of lower grade and value. The average price of high-grade fire brick at the factory, reduced to tons, is about \$5; building brick about \$4; and paving block about \$3. There is therefore no sufficient difference in value to require a grading of rates. Under these circumstances, placing high-grade fire brick in one class to take a higher rate would leave too much to manipulation by shippers and carriers to insure that equality of rates between strictly competitive articles and articles of the same class which it is the purpose of classification to secure. In so far as it was held in the *Stowe-Fuller case* that one rate should be applied to fire, building, and paving brick on shipments between the points involved the conclusion then reached is sustained by further and more exhaustive inquiry.

We come now to consider the question of rates. In 1897 the base rate on fire, building, and paving brick, Chicago to New York, was 20 cents per 100 pounds. January 1, 1900, the rate was raised to 25 cents per 100 pounds. In May, 1900, brick were classified as follows: Fire brick, 25 cents per 100 pounds; building brick, 22½ cents, and paving brick, 20 cents. In September, 1904, the rates were made 25 cents on fire and 20 cents on building and paving brick. This classification and the rates applicable were maintained until January 2, 1908. While the rates of 25 and 20 cents were usually scaled down to all points intermediate, Chicago to New York, it is to be observed that at 60 per cent points, including Pittsburg and points north and south thereof, the rates were 25 cents on fire brick, 22½ cents on building brick, and 20 cents on paving brick almost continuously from 1900 to January 2, 1908. The reason given by the carriers for this exception to the classification is that the general adjustment, if strictly applied, would result in giving some points west of Pittsburg lower rates on building brick than some points east thereof. This

exception is not very material to this inquiry for the reason that the 22½-cent rate is now checked in on eastbound traffic from all intermediate points, including the 60 per cent territory.

It is to be noted that for many years fire brick has taken the 25-cent rate and generally speaking for about the same length of time all other grades of brick have been carried on the 20-cent basis except from the 60 per cent territory. As a result of the finding in the *Stowe-Fuller case*, the carriers averaged the rates that were formerly applicable on the two classes. That is to say, the 22½-cent rate is a reduction of 2½ cents on fire brick and a raise of 2½ cents on all other brick. There is now and has been during all the years since 1900 a much larger movement of low-grade fire brick, paving and building brick than high-grade fire brick, and the net result is doubtless a raise in rates on the average. It is earnestly urged by both the building and paving brick interests that the raise of 2½ cents is sufficient to absorb their profits on shipments to Trunk Line territory. During the year and a half that the 22½-cent rate has been in effect shipments of paving block to Trunk Line territory have fallen off. There has been during the same time an apparent increase in the shipments of building brick. This may be accounted for, in part at least, by the fact that there was no raise in the building-brick rate from 60 per cent territory. Large shipments of building brick are made from this territory. How much the falling off of paving-block shipments is to be attributed to depressed business conditions there is no means of knowing. It appears that during 1908 there were manufactured and sold some 200,000,000 more paving brick and blocks than in 1907. This product largely found sale at points in Central Freight Association territory and points north and south thereof. It is estimated that between 10 and 15 per cent of the entire product prior to the raise in the rate was shipped to Trunk Line territory.

It is the contention of the carriers that for many years fire brick was so classed in their tariffs as to take a 25-cent rate; that no complaint has been made of that rate; that the traffic moved freely and in large volume under it; and that the presumption is that it is a reasonable rate. How much the absence of complaint of the 25-cent rate is explained by the fact that a large proportion of fire brick was transported under a lower rate we are not informed. The force of the contention of the carriers with respect to the high rate upon fire brick is weakened to some extent by the fact that for the past year and a half fire brick have been carried at 22½ cents per 100 pounds. The carriers insist, however, that this rate is not to be considered as voluntarily made, but that it was put into effect as a result of the Commission's finding in the *Stowe-Fuller case*. The

evidence appears to show that during most of the time the 25-cent rate was in effect on fire brick a large proportion of all brick transported from Central Freight Association to Trunk Line territory was carried on the 20-cent rate. The extent to which fire brick which should have paid 25 cents was transported at a lower rate does not definitely appear. The carriers do not go further than to admit that shipments of the character were made. Shippers insist it was very generally the case. Our conclusion is that to a considerable extent, certainly prior to August, 1906, the classification was not observed and therefore a large proportion of all brick between the points involved was shipped on the 20-cent rate. On some of the fire brick the 25-cent rate was paid, but when this occurred it was probably paid on the highest grade which could be readily distinguished from other brick. The movement of brick has increased enormously during the past few years. Brick is very desirable traffic. It moves in large volume, can be loaded to the full capacity of cars, and is not subject to loss and damage. Paving and low-grade fire brick move in any sort of freight equipment except flat cars and are a low-grade commodity. These elements seem to call for the making of low rates. It being impossible to classify brick so as to avoid confusion, misbilling, etc., a rate should be fixed which shall as near as may be permit free movement and which shall take into consideration the interests of the shippers and the carriers.

The traffic we here have under consideration moves almost entirely from Ohio and contiguous Kentucky and West Virginia territory to Trunk Line territory. There is no movement of any kind of brick from Chicago to New York and very little movement except the highest grade of fire brick from points west of Ohio to Trunk Line points. The haul from all the points of production to Trunk Line points on the average is much shorter than from Chicago to New York. Carriers are ordinarily entitled to charge a slightly higher per mile rate for shorter hauls than are proper to be charged for longer distances.

Building and paving brick were carried for many years on a 20-cent basis, and the tariff rate on fire brick was 25 cents. The establishment of these rates by the carriers was voluntary. The amount received for the traffic as a whole is to be presumed a reasonable compensation for the service. No complaint reached the Commission until after the decision in the *Stowe-Fuller case* with respect of the reasonableness of either rate, and then the question presented was one respecting the subsequent raise in rates on building and paving brick. We believe that a fair conclusion from all the evidence, taking in consideration the greater volume of shipments moving under the lower rates, is that for the transportation of fire, building, and

paving brick between the points involved the carriers received on the average not to exceed 21 cents per 100 pounds during most of the time that the last classification was in effect. The evidence fails to show that this rate is unreasonable. The defendants have failed to justify the increase represented by 22½ cents.

We therefore find that the Chicago-New York base rate to be applied on fire, building, and paving brick on shipments eastbound from Central Freight Association territory to Trunk Line territory should not exceed 21 cents per 100 pounds, and that any charge in excess of that amount is unreasonable. It is our opinion that this rate scaled to points intermediate, Chicago to New York, on established percentages will not impose an unjust burden upon any shipper and will yield sufficient revenue to the carriers.

In cases Nos. 1401, 1528, and 1530 reparation is asked. Under all the circumstances shown we are of the opinion that no order for reparation is warranted.

An order will be entered in accordance with the above finding.

17 I. C. C. Rep.

No. 2179.

KAYE & CARTER LUMBER COMPANY

v.

MINNESOTA & INTERNATIONAL RAILWAY COMPANY
ET AL.

No. 2180.

SAME

v.

SAME.

Submitted May 24, 1909. Decided November 23, 1909.

1. A carload rate and minimum weight, specified in a published tariff as applicable to a car of stated size, constitute a definite offer to the shipping public to move the commodity on those terms, and when a shipper has ordered a car of that capacity the Commission will not sanction the imposition upon him of additional transportation charges on a shipment that could have been loaded into such a car when the carrier for its own convenience furnishes him a larger car.
2. The tariffs of the defendants held to be unreasonable and unlawful in that they did not contain a rule providing that when for their convenience they use a larger car than the one ordered the published rate and minimum weight applicable under their tariffs to a car of the dimensions ordered will be applied in all cases where the shipment actually moved could have been loaded into a car of the size ordered. Reparation awarded.

C. A. Kaye for complainant.

Charles Donnelly for Minnesota & International Railway Company and Northern Pacific Railway Company.

William R. Begg for Great Northern Railway Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

N. H. Loomis and *F. C. Dillard* for Union Pacific Railroad Company.

A. G. Briggs and *George W. Markham* for Chicago Great Western Railway Company, and *H. G. Burt* and *C. H. F. Smith*, receivers thereof.

James Hagerman and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The same ground of complaint is urged in each of these cases, and they may therefore be considered together. They are submitted upon the complaints and answers and upon an agreed statement of facts from which the issue may be stated as follows:

The complainant is a copartnership located at Minneapolis, being engaged in the lumber business. On or about June 13, 1907, it ordered a 33-foot car for a shipment of cedar posts from Hines, in the state of Minnesota, to Benton, in the state of Nebraska, and on or about November 11, 1907, ordered a like car for a similar shipment to Windsor, in the state of Missouri. The principal defendant, which was the initial carrier in both movements, for its own convenience furnished the complainant in each instance with larger cars.

The tariffs in effect at the time the shipments moved named a through rate on telegraph and telephone poles in carloads from Hines to Benton of 33 cents per 100 pounds, and to Windsor a through rate of 26 cents, with a minimum weight for cars over 30 feet and under 34 feet in length of 24,000 pounds; for cars 34 feet in length and over a minimum weight of 30,000 pounds was provided. On the shipment of June 13, the complainant was required to pay charges amounting to \$99, being at the rate of 33 cents per 100 pounds on a minimum weight of 30,000 pounds fixed for a 34-foot car; and on the shipment of November 11 charges were collected in the amount of \$78, being at the rate of 26 cents on the same minimum weight. The complainant's contention is that inasmuch as its shipments could have been loaded into cars of the dimensions ordered and the larger cars were furnished for the convenience of the principal defendant, the charges ought to have been assessed on the net weight of the shipments, namely, 27,380 pounds and 24,900 pounds, respectively. It therefore demands reparation in the total amount of \$21.91, being the difference between the charges collected and the charges that would have been properly collectible had the 33-foot cars been furnished as ordered. The defendants admit that the shipments actually carried by them in the larger cars could have been loaded into cars of the size ordered by the complainant.

The point urged on behalf of the defendants is that the charges collected on the shipments were based on the requirements of the published tariffs in effect at the time the shipments were made. It is true that on April 1, 1909, some months after the date of the

shipments in question, the defendants published a tariff rule, which is still in force, as follows:

When carrier can not furnish car of the capacity ordered by shipper, and for its own convenience furnishes car of greater capacity than the one ordered by the shipper, it will be used on the basis of the minimum carload weight fixed in tariff to apply on size of car ordered by shipper, but in no case less than actual weight.

But this rule was not in the published tariffs at the time the shipments moved, and the defendants contend that they were not therefore permitted, when their supply of equipment necessitated the furnishing of larger cars than ordered, to assess the charges on the basis of the published minimum for the smaller car. They also insist that the charges assessed were not unreasonable and therefore no reparation should be awarded.

It is well settled under previous decisions of the Commission that we can not sanction the imposition of additional transportation charges upon a shipper who has ordered a car of dimensions specified in a carrier's tariff, but who, for the convenience of the carrier, has been supplied with a larger car. A carload rate and a minimum weight specified in a lawful tariff hold out a definite offer to the shipping public to move merchandise on those terms, and there should be a rule in all tariffs to the effect that when a carrier, for its own convenience, supplies a larger car than the one ordered, it will do so on the basis of the published rate and minimum weight applicable to the length of car so ordered by the shipper, in all cases where the shipment actually moved could have been loaded into the car ordered. *Hanna Coal Co. v. Northern Pacific Ry. Co.*, 16 I. C. C., Rep., 289. The tariffs of the defendants were unreasonable and unlawful in not containing, at the time these shipments were made, a rule embodying such provisions, in conformity to the Commission's administrative rulings.

An order will be entered awarding the complainant reparation in the amount demanded, with interest, and requiring the defendants to publish and maintain such a rule in their tariffs for not less than two years.

17 I. C. C. Rep.

No. 2761.

WEBER CLUB & INTERMOUNTAIN FAIR ASSOCIATION
v.
OREGON SHORT LINE RAILROAD COMPANY ET AL

Submitted October 30, 1909. Decided November 26, 1909.

1. The provisions of section 22 of the act do not entirely exempt the issuance of excursion tickets from the operation of the undue-discrimination provision of the act, but the statute itself authorizes discrimination in permitting the issuance of excursion tickets, and it is only in cases where this privilege has been plainly abused that the Commission would be justified in interfering.
2. Defendants make passenger rates of one fare for the round trip in the spring and fall of each year to Salt Lake City, Utah, from surrounding territory in order that persons may visit that city for the Mormon conferences and the Utah State Fair; but it issues passenger rates of only one and one-third the round trip fare for excursions to the Intermountain Fair held in the fall of each year at Ogden, Utah. Complainants do not attack the reasonableness of the excursion rates to Ogden, but they complain that defendants unduly discriminate against Ogden; *Held*, That the Commission is not satisfied from the record that Salt Lake City has been given by these excursion rates a preference of such proportions as to be termed undue.
3. The Commission suggests that defendants should establish a uniform passenger rate of 1½ cents per mile each way to all state and county fairs; but this is a matter upon which the Commission has no authority to make any requirement.

H. H. Henderson and A. R. Heywood for complainants.

F. C. Dillard and P. L. Williams for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainants, representing the interests of Ogden, complain that the rates of the defendants discriminate in favor of Salt Lake City and against Ogden.

The Mormon Church holds two conferences each year at Salt Lake City—one in April and another in October. At these conferences the attendance of all Mormons is urged, and that of many is

required. The testimony indicates that where the journey is not too expensive from one-fifth to one-third of the entire Mormon population visit Salt Lake during these conferences.

A considerable Mormon population is tributary to the lines of the Union Pacific system north, east, and west of Ogden, and for the purpose of enabling these people to attend these semiannual conferences it has been the practice of the defendant railways, in common apparently with other railways running into Salt Lake City, to make an excursion rate of one fare for the round trip to Salt Lake City during the week of the conference. Since the conference is held at the same time each year, it has come to be an understood custom that these excursion rates will be made at these times. The rate is not confined to members of the Mormon Church, but is open to the entire public, and the testimony indicates that Mormons and Gentiles alike are accustomed to wait for these semiannual excursions to visit Salt Lake City for purposes of trade and amusement, as well as for religious edification. Not only do consumers travel to Salt Lake for the purpose of satisfying their necessities at retail stores, but the country merchants take this opportunity to visit and buy from the wholesale dealer.

It further appeared that these semiannual excursions were taken advantage of by other conventions of various kinds. Since the rate is open to the entire public, and since the date is known for a considerable time in advance, any other meeting, by fixing its date during the same week, can obtain the benefit of the low fare. It appeared that there were frequently special attractions at the theaters during this week, and that all this was advertised by the defendant lines in such a way as to attract travelers to Salt Lake City at these times.

The Utah State Fair is held at Salt Lake City, and the state appropriates considerable sums from year to year for the support and encouragement of that institution. Of late years it has generally been held during the week of the fall conference. The Intermountain Fair is a similar organization, receiving, however, no support from the state, which holds its expositions in the fall at Ogden. It is in some sense a rival of the State Fair, and it asks of the defendants the same excursion rate which is accorded to the state fair. The best rate, however, which it has been able to obtain in the past is one fare and one-third for the round trip.

Passengers visiting Salt Lake City from points north, east, or west of Ogden upon the lines of the defendants must pass through Ogden and 36 miles beyond in order to reach Salt Lake City. From many of these points the one-way fare to Salt Lake City would be less than the one-and-one-third fare to Ogden. It results, therefore, that many persons can travel through Ogden to Salt Lake City each year for the purpose of trade and amusement at Salt Lake City at a cheaper

rate than they can visit Ogden for the same purposes, and this discrimination constitutes the gravamen of this complaint.

It should be noted that upon the tariffs no advantage is given to the State Fair over the Intermountain Fair. The Oregon Short Line, and, as we understand the testimony, the Union Pacific lines in that section, accord to all fairs a rate of 2 cents per mile each way. Since the ordinary passenger rate is 3 cents per mile upon the defendant lines in this vicinity, this results in a rate of one-and-one-third fare for the round trip. The Utah State Fair obtains a rate of one fare for the round trip, not by virtue of the fact that it is a State Fair, but by reason of the circumstances that its sessions at Salt Lake City are held during the fall conference of the Mormon Church.

The complainants do not attack the reasonableness of the excursion rate to Ogden. Their only complaint is that the defendants discriminate against Ogden.

The defendants contend, first, that by the provisions of section 22 excursion rates are entirely exempted from the operation of the act to regulate commerce, or, at least, from those provisions of the act relating to discrimination; but, second, if this be not correct, then, that the discrimination in this case is not undue.

As originally enacted, the twenty-second section provided—that nothing in this act shall apply * * * to the issuance of mileage, excursion, or commutation passenger tickets.

While the act stood in this form, *Larrison v. Chicago & Grand Trunk Ry. Co.*, 1 I. C. C. Rep., 147, was decided. The Chicago & Grand Trunk Railway Company sold to commercial travelers mileage books of 1,000 miles at the rate of 2 cents per mile. Its published tariffs made no reference to this mileage-book rate, and the sale of such books was confined to commercial travelers. Larrison, having occasion to travel between Port Huron and Chicago, attempted to buy one of these books, and, being refused, brought his complaint. The defendant contended that under the provisions of the twenty-second section the Commission had no jurisdiction whatever over the sale of those mileage books, but the Commission held that while it was left discretionary with the carrier by the terms of that section to sell or not to sell such tickets, their sale was nevertheless within the purview of the act to the extent that the rate must be named in the tariff of the carrier, and that the ticket must be open to all members of the public.

In the spring of 1889 the twenty-second section was amended by substituting the word "prevent" for "apply," so that it read then, as now—

that nothing in this act shall prevent the issuance of mileage, excursion, or commutation tickets.

In the Matter of Passenger Tariffs, 2 I. C. C. Rep., 649, at page 653, the Commission adverted to this change in the following language:

This is a very important change, and must be assumed to have been made for some purpose. One purpose may very well have been to remove any possible doubt whether, under the law as it existed before, the general rules of equality, impartiality, and publicity prescribed for other cases, were applicable to these classes of tickets to which in terms it was said nothing in the act should apply. Those words of exclusion are no longer in the statute, and the general requirements it makes are as applicable to these classes of tickets as to any others. They must therefore be offered impartially to all who accept the conditions on which they are issued, and the rates must be published as is required in the case of other tickets.

Cator v. Southern Pacific Co., 6 I. C. C. Rep., 113, involved this same question. The defendants had made an excursion rate to the Republican and Democratic conventions at Minneapolis and Chicago, in June, 1892, but had declined to accord similar rates to the convention of the People's party at Omaha in July of that same year. Thereupon, Cator, one of the delegates who had attended the convention at Omaha, filed his complaint alleging discrimination. The Commission held that it could grant the complainant no relief, since the statute authorized the making of excursion rates, and it was for the carrier to say when and where those rates should be established. The conclusion was stated in the following language:

The special excursion rates in June were not limited to convention delegates or to any portion of the public, and the fact that they had been in force did not make it compulsory upon the carriers to establish a similar reduced rate in July upon application of persons desiring to attend another convention. Under the statute, the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates had been in force over their connecting roads during the previous month.

This provision was again before the Commission in *Sprigg v. Baltimore & Ohio R. R. Co.*, 8 I. C. C. Rep., 443. The Baltimore & Ohio and the Pennsylvania railroads had for many years issued a commutation ticket between Baltimore and Washington. This rate had been withdrawn and the purpose of the complaint was to compel its restoration. It was alleged that this commutation rate was reasonable, under the first section, for the service performed, and that the higher rate resulting from its withdrawal was unreasonable, and, further, that discrimination against Baltimore resulted from the maintenance of commutation rates between intermediate points and Washington.

The Commission held that it had no authority to order the restoration of the commutation rate; that it was for the carrier to say whether it would or would not establish such rate; that the

Commission had jurisdiction to find a reasonable rate from Baltimore to Washington, but had no authority to order the carriers to sell to a particular class transportation at a lower cost. This decision was rested largely upon *Lake Shore & Michigan Southern Ry. Co. v. Smith*, 173 U. S., 684, in which the Supreme Court had decided that the legislature of Michigan had no authority to require carriers to sell a 2,000-mile book at 2 cents per mile, that being less than the regular rate of passenger fare.

The inference from these cases is that the carrier may determine for itself whether it will sell mileage, commutation, or excursion tickets; but that if it elects to sell them it must do so subject to the provisions of the act. The rate must be published; it must be observed; it must be open impartially to all members of the public who avail themselves of the conditions of the ticket. In the *Cator case* and the *Sprigg case* it was held that the action of the carriers, although resulting in discrimination, was not unlawful, inasmuch as the statute expressly authorized the discrimination.

We do not, however, understand those cases to hold, nor are we satisfied to hold, as claimed by the defendants, that the granting and refusing of these tickets might not work a discrimination which this Commission would have power to correct. While it might not be unlawful for carriers to withdraw the commutation rate from Baltimore to Washington, leaving in effect a similar rate from stations nearer to Washington, it might be an undue discrimination if those carriers were to except some one station from the benefits of the commutation rate while granting that rate to stations both more distant and less distant. It must ordinarily be left entirely with the carrier to determine the time, the place, and the amount of an excursion rate, but it is conceivable that by the granting of reduced transportation under the guise of excursion rates the most serious and unjustifiable discrimination might be worked. We are not prepared to admit, therefore, that under no circumstances could this Commission inquire whether undue discrimination has arisen from the issuing of mileage, commutation, or excursion tickets; but the statute itself authorizes discrimination in permitting the issuance of excursion tickets, and it is only in cases where this privilege has been plainly abused that we should be justified in interfering.

The case presented by this record is not of that character. The excursion rate established to Salt Lake City on account of these conferences of the Mormon Church is a natural and proper one. We have required the defendants to furnish a statement showing the movement of passengers through Ogden to attend these fall conferences as compared with the movement to Ogden in attendance upon the Intermountain Fair, and these statistics do not indicate that any great

or undue predjudice is being worked against the locality which the complainants represent. It is possible that under the guise of excursion rates like those attacked Salt Lake City might be given a preference of such proportions as to be termed undue, but we are not satisfied that such has been the result of those rates up to the present time.

The passenger rates upon the lines of the defendant are 3 cents per mile. The excursion rate accorded the Mormon conference is 3 cents per mile one way, or $1\frac{1}{2}$ cents per mile each way. The Commission suggests that this rate would be sufficiently high as an excursion rate to the state and county fairs and that the establishment of this uniform rate would remove all ground of complaint and would probably stimulate the movement of traffic to such an extent as would make good to the carriers any loss in revenue from a reduction in the rate itself; but this is a matter upon which we have no authority to make any requirement.

The complaint must be dismissed.

17 I. C. C. Rep.

No. 2451.

PEERLESS AGENCIES COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted October 22, 1909. Decided November 24, 1909.

Reparation awarded because of the excessive minimum fixed by defendants on carload of wood mantles from Buffalo, N. Y., to San Francisco, Cal.

J. O. Bracken for complainant.

Robert Dunlap, T. J. Norton, and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This case was submitted upon the record in No. 1934 *Montague & Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 17 I. C. C. Rep., 72.

The complainant made shipment of a carload of wood mantles from Buffalo, N. Y., to San Francisco, Cal., on or about May 20, 1908. The actual weight of the shipment was 14,580 pounds; but charges were assessed upon a minimum of 16,000 pounds, at \$1.50 per 100 pounds. We are of the opinion and find that a minimum of 14,000 pounds would have been reasonable to have applied to the movement of this commodity in a car 40 feet in length. The car actually furnished the complainants was 50 feet in length, and in our opinion a reasonable minimum for this car would have exceeded 16,000 pounds. At the time this shipment moved the tariffs of these defendants made no distinction in the size of the car furnished. Upon these facts we hold that the complainant is entitled to reparation. While the defendants might have adopted the sliding scale by which the minimum applicable to the car furnished this complainant would have exceeded the minimum for which charges were imposed, they had not elected to do so; but, upon the contrary, were furnishing to shippers cars of different sizes. Under those circumstances

17 I. C. C. Rep.

we think it is the right of this complainant to stand with other shippers upon a minimum of 14,000 pounds, which has been since established in accordance with our order. It does not appear that the shipment of the complainant was such that he needed a car 50 feet in length, nor that the car was filled to its capacity, nor that he ordered or could use a car of that length. If this complainant is to be bound by the size of the car, it should have been put upon notice that the size was material. In our opinion, therefore, charges should have been assessed upon the actual weight—14,580 pounds—and the complainant is entitled to recover the difference between what he has paid and what he would have paid had the charges been so assessed, or \$21.30, with interest.

An order will be so entered.

CLARK, Commissioner, dissenting:

I am unable to agree with the view of the majority in this case. At the time the shipment moved the minimum weight applicable to any size of car was 16,000 pounds. This was complained of as unreasonable in case 1934, referred to in the majority opinion, because it was not possible to load that amount in the smaller cars. The Commission found that 14,000 pounds was a reasonable minimum for a car of 40 feet in length, and that it would be reasonable to increase that minimum for cars of greater length than 40 feet. The carriers did not see fit to establish a graduated scale of minimum weights, but did reduce the minimum to 14,000 pounds for any size of car. They thereby established for cars exceeding 40 feet in length a minimum lower than that which the Commission, in the exercise of its power, which is limited to fixing the maximum that shall be charged, found to be reasonable.

The complainant knew that the minimum applicable to his shipment was 16,000 pounds. He was given a car 50 feet long, into which he could with ease load the 16,000 pounds, but he elected to send only 14,500 pounds. Inasmuch as the Commission found that at that time and for the future a reasonable minimum for that car would exceed 16,000 pounds, I find no reason for awarding this complainant repatriation.

I am authorized to say that Commissioners CLEMENTS and LANE concur in these views.

17 I. C. C. Rep.

No. 2686.

ACME CEMENT PLASTER COMPANY

v.

CHICAGO & ALTON RAILROAD COMPANY ET AL

Submitted November 20, 1909. Decided November 24, 1909.

Complainant shipped a carload of cement plaster, containing 60,000 pounds, from Acme, Tex., to East St. Louis, Ill., the rate in effect being 18 cents per 100 pounds from Acme to East St. Louis, with a minimum of 30,000 pounds, and a rate of 23 cents from Acme to Braidwood, Ill., with the same minimum, the shipment going forward upon the 18-cent rate. When the car reached East St. Louis, it was ordered by complainant to its warehouse and the 18-cent rate was paid. Complainant removed one-half of the carload and rebilled the car to Braidwood. The tariff did not provide for reconsignment at East St. Louis. The local rate from East St. Louis to Braidwood of 9 cents per 100 pounds was assessed. Complainant insists that the balance of the through rate, or 5 cents per 100 pounds, should have been collected, and makes claim for 39 other shipments delivered at various points under similar conditions; *Held*, That the shipment from East St. Louis to Braidwood was a state movement, and the carrier had no right to allow it to go forward at the balance of the through rate. *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403, cited and followed. Complaint dismissed.

John B. Daish for complainant.

Winston, Payne, Strawn & Shaw for Chicago & Alton Railroad Company.

E. B. Peirce and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; and St. Louis, San Francisco & Texas Railway Company.

C. C. P. Rausch for St. Louis, Iron Mountain & Southern Railway Company.

S. F. Andrews for Southern Railway Company.

R. B. Jenkins for Quanah, Acme & Pacific Railway Company.

Edward Rozier for Mississippi River & Bonnetterre Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The Acme Cement Plaster Company is a corporation under the laws of Illinois, with its principal office at St. Louis, Mo., and is en-

gaged in the manufacture, sale, and shipment of cement plaster from Acme, Tex., and Marlow and Cement, Okla., to various points in the United States. It has a large warehouse at East St. Louis, Ill., to which it ships large quantities of the products of its various mills, and from which it distributes the same in accordance with the demands of its customers.

Reparation is sought in this proceeding on account of 40 different shipments originating at Acme, Tex., and Marlow and Cement, Okla., delivered at various points on the Chicago & Alton Railroad in the state of Illinois. The question presented by all the shipments is identical and for illustration we may take one from Acme, Tex., to Braidwood, Ill.

At the time of the shipment there was in effect a rate of 18 cents per 100 pounds from Acme to East St. Louis, with a minimum of 30,000 pounds, and a rate of 23 cents from Acme to Braidwood via East St. Louis, with a minimum of 30,000 pounds, to which the Chicago & Alton was a party. This tariff did not provide for a reconsignment at East St. Louis.

The complainant shipped a carload of cement containing 60,000 pounds from Acme to East St. Louis upon the 18-cent rate. When the car reached East St. Louis it was ordered by the complainant to its warehouse, and the freight at the rate of 18 cents per 100 pounds was paid. The complainant now removed one-half of the carload, leaving 30,000 pounds, or slightly in excess, in the car, and rebilled the car to its customer at Braidwood. The local rate of the Chicago & Alton from East St. Louis to Braidwood was 9 cents per 100 pounds, and this rate was assessed. The complainant insists that the balance of the through rate, or 5 cents per 100 pounds, should have been collected.

It seems that formerly, before the present regulations of the Interstate Commerce Commission as to the construction and the publication of tariffs took effect, it was the custom of the Chicago & Alton to apply in cases like this the balance of the through rate, or 5 cents per 100 pounds, and it further appeared that at the present time that company has in effect a proportional rate from East St. Louis upon shipments of this character of 5 cents per 100 pounds, but the Alton declined to pay the reparation demanded by the complainant in these cases, and insisted that the shipment from East St. Louis was a purely local transaction, of which this Commission has no jurisdiction.

The complainant paid the freight and took possession of this car at East St. Louis, and the car was rebilled when it went forward to Braidwood. These facts would probably bring this case within the rule laid down by the Supreme Court in *Gulf, Colorado & Santa Fe*

Ry. Co. v. Texas, 204 U. S., 403, thus sustaining the contention of the defendant that the shipment was a state movement.

It should also be noted that neither the tariff establishing a joint rate of 23 cents to Braidwood nor that establishing a rate of 18 cents to East St. Louis contained any provision for reconsignment. When, therefore, this car reached East St. Louis, its original destination, and was there accepted by the complainant, the carriers had no right to allow it to go forward at the balance of the through rate.

The complainant broadly contends, however, that this was, in fact, a through movement; that while these tariffs contained no reconsigning provision, they ought in justice to have done so, following a very usual custom, and that this Commission ought now to protect complainant in the exercise of that right by the awarding of damages.

Assuming that the tariff had granted a reconsigning privilege, still we do not think that, under that provision, the complainant could have done what it seeks to do—namely, remove a portion of the carload in transit and send forward the balance at the through rate. Suppose the complainant had shipped a carload of 50,000 pounds of plaster from Acme to St. Louis, had removed 20,000 pounds at East St. Louis, and had sent forward the balance at the through rate. The result of the transaction would have been a movement of 20,000 pounds of plaster from Acme to East St. Louis at a carload rate, although no tariff provision authorized it.

We express no opinion as to the right of carriers to provide for storage in transit which might involve shipments out in carloads of different sizes from shipments in. We confine our decision to the exact question before us, and hold that the right of reconsignment in transit does not carry with it the right to remove a portion of the carload at the reconsigning point. Complaint dismissed.

17 I. C. C. Rep.

No. 2430.

PEASE BROTHERS FURNITURE COMPANY

v.

SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD
COMPANY ET AL.

No. 2259.

LACHMAN BROTHERS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

No. 2399.

PHOENIX FURNITURE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 20, 1909. Decided November 24, 1909.

The minimum carload weights for the transportation of furniture from various eastern points to certain Pacific coast cities involved in these proceedings, established by the sliding scale for cars of the length used, were reasonable and the complaints should therefore be dismissed.

J. O. Bracken for complainants.

Robert Dunlap, T. J. Norton, and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

A. S. Halsted and W. R. Kelly for San Pedro, Los Angeles & Salt Lake Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The above cases all involve the same question and may be disposed of in one report.

In No. 1934, *W. W. Montague & Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 17 I. C. C. Rep., 72, the Commission considered the minimums fixed for the movement of certain kinds of furniture from eastern points of origin to the Pacific coast. Some of these minimums were approved and others were disapproved. Among those approved were the minimums applicable to the kinds of furniture involved in these cases.

We held that the minimums in effect were reasonable for a car 40 feet in length. Between May and November, 1907, the defendants maintained a sliding scale of minimums; that is, starting with a certain minimum for a car 40 feet in length, they increased that minimum as the length of the car increased. The three shipments presented by the above complaints moved in cars of more than 40 feet in length and were assessed upon the basis of the minimums fixed by the sliding scale. The complainants insist that the charges should have been assessed upon the basis of the minimum approved by this Commission for the car 40 feet in length.

It was held in No. 1934 that there should be a relation between the minimum and the physical capacity of the car, which must mean that the minimum might properly increase as the size of the car increased. The opinion stated that in complying with the orders which were made reducing certain minimums for cars 40 feet in length, the carriers were at liberty to establish a sliding scale, taking as a basis the minimum ordered by the Commission and a car 40 feet in length. In assessing reparation in the cases heard with No. 1934 we reduced the minimum where the car furnished the shipper was less than 40 feet, although approved for a car that size. It is evident that upon the same theory the minimum might properly be increased if the car exceeded 40 feet in length.

We are of the opinion that the minimums involved in these proceedings established by the sliding scale for cars of the length used were reasonable and the complaints should therefore be dismissed.

17 I. C. C. Rep.

No. 2010.
BAER BROTHERS MERCANTILE COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted June 2, 1909. Decided November 26, 1909.

1. Rate of 45 cents per 100 pounds applied to the transportation of beer in carloads from Pueblo, Colo., to Leadville, Colo., which is part of a through transportation from St. Louis, Mo., to Leadville, Colo., is unreasonable. Such rate should not exceed 30 cents per 100 pounds. Reparation awarded.
2. Complainant's application for establishment of through route and joint rate for the transportation of beer in carloads over defendant line from St. Louis, Mo., to Leadville, Colo., via Pueblo, denied, under the circumstances appearing of record.

William P. Harrison for complainant.

E. N. Clark and *T. L. Philips* for Denver & Rio Grande Railroad Company.

Edward P. Costigan for Denver Chamber of Commerce and Board of Trade, Pueblo Transportation Association, and Colorado Manufacturers' Association and Transportation Bureau, interveners.

George Allen Smith for Colorado Brewers' Association and Walter Brewing Association, interveners.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainant, on various dates from October 3, 1907, to December 5, 1908, shipped over the lines of defendants, from St. Louis, Mo., to Leadville, Colo., 16 carloads of beer. The defendants collected for the transportation thereof a rate of 92 cents per 100 pounds on a total weight of 482,376 pounds. Reparation is asked. The complainant also asks for the establishment of a through route and a joint rate applicable thereto over the lines of the defendants from St. Louis to Leadville.

The Denver Chamber of Commerce and Board of Trade, the Pueblo Transportation Association, the Colorado Manufacturers Association

and Transportation Bureau, the Colorado Brewers Association, and the Walter Brewing Company have intervened and submitted testimony and were heard on argument, and briefs were submitted in their behalf.

This case is similar, so far as the transportation and shipments are concerned, to the cases of *Baer Brothers Mercantile Company v. Mo. P. Ry. Co.*, 13 I. C. C. Rep., 329, and *Nollenberger v. Mo. P. Ry. Co.*, 15 I. C. C. Rep., 595.

The rate under which the shipments were made was a combination of the rate of the Missouri Pacific from St. Louis to Pueblo, which during the period covered by this controversy was 47 cents per 100 pounds, and the rate of the Denver & Rio Grande from Pueblo to Leadville, which was during the same time 45 cents, thus making the total rate 92 cents. The beer was delivered by the Lemp Brewing Company to the defendant, the Missouri Pacific, at St. Louis, with instructions to transport same to Leadville for delivery to complainant, and with the further instruction that the shipments should be routed beyond Pueblo via the Denver & Rio Grande. The property moved through from St. Louis to Leadville in the cars in which it was originally loaded. At the time of the receipt of the shipment the Missouri Pacific issued to the Lemp Brewing Company a shipping receipt, stating that the beer had been received by it for shipment to the order of Baer Brothers Mercantile Company, Leadville, via the Denver & Rio Grande. The shipments were accepted for transportation from St. Louis to Leadville, and were delivered by the Missouri Pacific to the Denver & Rio Grande at Pueblo on transportation sheets issued by the Missouri Pacific and accepted by the Denver & Rio Grande. Neither the shipper nor the consignee intervened at Pueblo or elsewhere. The Denver & Rio Grande advanced to the Missouri Pacific the full amount of its charges and collected same from the consignee. In each case payment of the charges was made under protest. In the *Nollenberger case*, *supra*, as well as in the *Baer Brothers case*, *supra*, the Commission held that these facts, together with other facts of record applying to shipments of beer from St. Louis to Leadville, constitute an arrangement for through and continuous carriage which clearly brings the transportation within the scope of the act to regulate commerce.

The evidence taken in the *Baer Brothers case* was stipulated to be taken and considered as evidence in this case, so far as material to the issues presented. During the hearing some additional evidence to that submitted in the *Baer Brothers case* was submitted by the Denver & Rio Grande with respect of the conditions of transportation from Pueblo to Leadville; that is, a further showing as to grades, curves, and general statements as to the expenses of opera-

tion of that portion of its line. Considerable evidence was introduced in behalf of the interveners, but the conclusion reached by us obviates its detailed discussion herein. A careful review of the whole testimony in this record, as well as that submitted in the *Baer Brothers case*, leads us to the conclusion that there are no changes in conditions and circumstances of shipment of beer in carloads from St. Louis to Pueblo or from Pueblo to Leadville which differentiates this case from that of the *Baer Brothers case*, and we are led to the same conclusion. We therefore find in this case, upon substantially similar facts, that the rate of 45 cents per 100 pounds exacted by the Denver & Rio Grande Railroad Company for the transportation of beer in carloads from Pueblo to Leadville, originating at St. Louis and transported by defendant's lines, was unjust and unreasonable to the extent that it exceeded 30 cents per 100 pounds. Complainant is therefore entitled to reparation.

It appears that a carload of beer, included in the complaint, was shipped June 11, 1908, weighing 30,360 pounds. The evidence shows that this car moved from St. Louis to Denver, Colo., via the Chicago, Burlington & Quincy Railroad, and thence via the Denver & Rio Grande to Leadville. Inasmuch as the Chicago, Burlington & Quincy is not a party defendant and the rate charged by the Denver & Rio Grande from Denver to Leadville has not been herein considered, no reparation for this shipment can properly be awarded.

This leaves for consideration the question of the establishment of a through route and a joint rate applicable thereto from St. Louis to Leadville over the lines of the defendants. In the *Baer Brothers case* no order was made fixing a reasonable maximum rate for the transportation of beer between the points named. The rate of 45 cents exacted by the Denver & Rio Grande was held to be excessive, and 30 cents per 100 pounds found to be a reasonable and just rate. It was stated "that if the Denver & Rio Grande does not reduce its charges in accordance with this report or suitable through facilities are denied, complainant can file its petition asking the establishment of a joint through route and rate." In accordance with this suggestion, complainant in its petition included in the prayer for relief an application for the establishment of a through route and a joint rate. As before stated, the shipments in this case were made from St. Louis to Leadville on a single shipping receipt or bill of lading, and the movement was in one car without break of bulk at Pueblo or any other point. While it is true that the rate applicable to the shipment between the points named was made up of the combination of the rate from St. Louis to Pueblo and Pueblo to Leadville, we find that a through route actually exists at the present time. It was stated by counsel for complainant during the hearing that the object in

filing the complaint was to secure a reasonable rate for the transportation of the beer from St. Louis to Leadville, and that it was in no wise interested in having joint rates made over the lines of the defendants; that the conditions of transportation were entirely satisfactory over the route that existed; and that there were several through routes to which the same rate was applicable over different lines of railroad between the same points. A rate formed by a combination of separate rates over connecting lines such as is here presented has every substantial feature of a through rate, and separately established rates over a through route is expressly recognized in section 6 of the act. The route over which the shipments moved is a through route. There is no break of bulk and no rebilling so far as the consignor and consignee are concerned. When a shipment is accepted by the Missouri Pacific at St. Louis billed by the consignor for delivery at Leadville, the carriage thereof is a continuous movement. As we understand the law, it does not require us in all cases where no through route and joint rate exists to establish a route and fix a rate applicable thereto, but only empowers us to do so in a proper case for the purpose of giving effect to the act. *Loup Creek Colliery Co. v. Virginian Ry. Co.*, 12 I. C. C. Rep., 471.

It does not appear that the interests of the public nor the ends of justice, as between the parties directly interested in this case, will be promoted by the establishment of a joint rate applicable to shipments of beer in carloads over the through route formed between St. Louis and Leadville by the lines of the defendants. Generally speaking, the Denver & Rio Grande does not participate in joint rates to points on its lines in Colorado, but business offered it by its connections is moved on combination rates. A holding therefore that a joint rate should be prescribed for the transportation of beer from St. Louis to Leadville might lead to a revolution in the rate-making system that has applied for many years over the lines of the Denver & Rio Grande without apparent necessity therefor, or without benefit to the shipping public. While not denying our authority upon proper showing to order the establishment and continuance of a joint through route in this case, upon the showing made we are not sufficiently advised as to justify us at this time in making an order which might entail such consequences.

It is to be noted in this connection that the intervening petitioners insist that through rates should not be made from St. Louis to Leadville which are lower than the combination on Denver and other Colorado common points; that such rates would limit the jobbing field enjoyed by merchants of Denver and other Colorado common-point merchants. As we see this case, it is not necessary to pass upon

this contention. While the Commission in a number of cases has announced the doctrine that through rates ordinarily should be somewhat less than the combination of local rates between the same points, that question does not necessarily arise in this case, and therefore need not be determined.

Since the complaint was filed, and on April 1, 1909, the Denver & Rio Grande has issued a tariff in which shipments of beer in carloads from Pueblo to Leadville are placed in fifth class. In the same tariff the fifth class rate is reduced from 50 cents per 100 pounds to 42 cents per 100 pounds. It is contended that here is presented a case of the reasonableness of the fifth class rate from Pueblo to Leadville. We do not find that this contention is tenable. The issue presented in this case is not changed by the issuance of the tariff which includes beer in fifth class. The 30-cent rate on beer originating in St. Louis when carried by the through route in question to Leadville may well be made a commodity rate lower than the class rate, as has been the case for many years. This, of course, would not disturb the adjustment of fifth class between the points named as a whole.

In respect of the rate of 47 cents per 100 pounds charged by the Missouri Pacific for the haul from St. Louis to Pueblo, complainant expresses itself as satisfied that it is a reasonably low rate and no evidence was submitted regarding the conditions of transportation over the Missouri Pacific, and therefore no finding can properly be made as to the reasonableness of the charge by that company. It is to be observed, however, that the distance from St. Louis to Pueblo is 926 miles, while the distance from Pueblo to Leadville is 157 miles. The only rate we have to consider therefore is that charged by the Denver & Rio Grande for its transportation from Pueblo to Leadville of beer originating at St. Louis and moving over a through route formed by the lines of the defendants. It is urged by the interveners that a reduction in the rate from Pueblo to Leadville without a corresponding reduction from Denver and other Colorado points to the same point of destination would constitute undue discrimination. Upon this point we express no opinion. The matter of adjusting rates relatively to meet conditions that will arise after the reduction herein ordered is made rests primarily with the defendants.

It is charged in this complaint that the rate of 70 cents per 100 pounds is a just and reasonable rate for the transportation of beer from St. Louis to Leadville, for the reason that beer under similar circumstances and conditions is transported from St. Louis to Salt Lake City, Utah, at a rate of 70 cents per 100 pounds and Leadville is intermediate. This contention was presented in the *Baer Brothers case, supra*, and was there fully discussed. The determination

reached in that case that the carriers under the circumstances might charge less for the haul from St. Louis to Salt Lake than from St. Louis to Leadville is not overcome by anything appearing in this record.

We therefore find that the charge of the Denver & Rio Grande Railroad Company of 45 cents per 100 pounds for its haul of beer in carloads from Pueblo to Leadville where the beer moved over the through route of the lines of the defendants from St. Louis to Leadville is unreasonable and unjust to the extent that it exceeds 30 cents per 100 pounds. We also find that complainant is entitled to reparation in the sum of \$723.56 with interest from the defendant, the Denver & Rio Grande Railroad Company, which represents the difference between the charge of 45 cents per 100 pounds that was exacted by that company and the amount that would have been collected had the reasonable rate herein found been charged. An order will be entered accordingly.

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Nos. 1310, 1313, and 1328.
NEW ORLEANS BOARD OF TRADE, LIMITED,
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted February 10, 1909. Decided November 26, 1909.

1. Defendant advanced its rates on certain classes from New Orleans to Mobile and Pensacola, to make the sums of the locals equal the through rates from New Orleans to Montgomery, Selma, and Prattville via Mobile and Pensacola; *Held*, That the rates resulting from said advance were unjust and unreasonable.
2. Former rates have been in effect, substantially unchanged, for over twenty years, and there was no evidence that they were not compensatory.
3. Neither by comparison with other rates nor by any facts appearing are the advanced rates shown to be reasonable.
4. The through rates from New Orleans via Mobile and Pensacola to Montgomery, Selma, and Prattville, on certain classes, held to be unreasonable and excessive, and reduced to the sum of the locals.

John A. Smith for complainant.

Ed Baxter, W. G. Dearing, and Sloss D. Baxter for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

On August 13, 1907, the defendant advanced its rates on certain classes from New Orleans, La., to Mobile, Ala., and Pensacola, Fla., and on the same date a revision of the tariffs of said defendant became effective, which resulted in an increase of rates upon certain commodities and a decrease in rates upon certain other commodities from the same point of origin to the same destinations.

The complainant attacks the advanced rates on traffic to each of these destinations in separate proceedings as unreasonable and unjust in and of themselves, and as unduly prejudicial to the commercial interests of the city of New Orleans and its merchants.

The complainant also attacks, in a separate proceeding, the through rates from New Orleans to Montgomery, Selma, and Prattville, Ala., on substantially the same grounds.

The defendant, admitting the advances in its rates substantially as alleged, denies that they or any of them are unreasonable or unjust.

The three cases are interdependent, in that the attack upon the local rates from New Orleans to Mobile and Pensacola, respectively, involves the through rates from New Orleans to Montgomery, Selma, and Prattville, and the attack upon the said through rates from New Orleans to these Alabama destinations involves the local rates from New Orleans to Mobile and Pensacola. The three cases were heard together and will be disposed of in a single report.

The advances in the class rates to Mobile and to Pensacola, respectively, are as follows:

Local rates.

NEW ORLEANS TO MOBILE.

	Class.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H. F.
August 13, 1907	50	39	38	31	27	16	12	15	12½	10	20	18 25
Prior to August 13, 1907	50	37	25	18	15	15	12	15	12½	10	15	18 25
Advance		2	13	13	12	1					5	

NEW ORLEANS TO PENSACOLA.

	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
August 13, 1907	55	45	38	31	27	16	18	18	15	13	25	25	30
Prior to August 13, 1907	56	45	36	25	20	15	18	18	15	13	25	25	30
Advance			3	6	7	1							

Freight transported over defendant's lines from New Orleans to Montgomery, Selma, and Prattville, and adjacent territory basing upon these points, is routed via Mobile or Pensacola, and prior to August 13, 1907, defendant's through rates from New Orleans to said points, in certain instances, exceeded the sum of the locals from New Orleans to Mobile or Pensacola added to the local rates from these points to Montgomery, Selma, and Prattville.

The excess of the through rates over the sums of the locals was exactly identical in each instance with the advances as shown by the above tables, namely, in classes 2, 3, 4, 5, 6, and E to Mobile, and in classes 3, 4, 5, and 6 to Pensacola.

The following table shows the difference between the through rates and the combinations prior to said advances:

Table of rates.

NEW ORLEANS TO MONTGOMERY AND SELMA, VIA MOBILE.

	Class.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H. F.
Through	89	79	68	55	47	36	24	27	20	16	44	35 33
Combination	100	77	65	42	35	35	27	35	26½	22	39	37 65
Advance		2	13	13	12	1					5	

Table of rates—Continued.

NEW ORLEANS TO MONTGOMERY AND SELMA, VIA PENSACOLA.

	Class.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.
Through.....	89	79	68	55	47	36	24	27	20	16	44	35
Combination.....	105	85	65	49	40	35	33	38	29	25	49	44
Advance			8	6	7	1						

NEW ORLEANS TO PRATTVILLE, VIA MOBILE.

Through.....	101	89	76	63	55	44	29	32	25	21	49	40
Combination.....	112	87	63	50	43	43	32	40	31	27	44	42
Advance		2	13	13	12	1					5	

NEW ORLEANS TO PRATTVILLE, VIA PENSACOLA.

Effective August 13, 1907.....	117	95	76	63	55	44	38	43	34	30	54	49
Prior to August 13, 1907.....	117	95	73	57	48	43	38	43	34	30	54	49
Advance			3	6	7	1						

The effect of the advance was to equalize the sum of the locals with the through rates from New Orleans to Montgomery, Selma, and Prattville, but the through rates from New Orleans to Montgomery, Selma, and Prattville were not changed, nor were the local rates from Mobile and Pensacola to Montgomery, Selma, and Prattville disturbed.

Prior to August 13, 1907, shippers, in order to get the benefit of the lower combination, sometimes shipped locally to Mobile and then re-shipped to Montgomery, Selma, and Prattville.

The defendant concedes that one of the objects of the advance was to keep the locals from being used to cut the through rate, and the evidence corroborates this position, and it is obvious that this was the underlying reason for the advance.

Transportation between New Orleans, Mobile, and Pensacola was conducted wholly by water carriers until about 1871, when carriage by rail was inaugurated, and shortly thereafter the defendant acquired the railroad which had been built from New Orleans to Mobile and Pensacola, and has operated the same continuously to the present time as a part of its system.

The earliest rail class rates applying via this route, as shown by this record, were established in 1887, and they remained substantially unchanged until the said advance of August 13, 1907. Comparison of water rates issued by the Mobile and Gulf Steamship Company, 17 I. C. C. Rep.

effective in 1907, and the rail rates prior to the said advance, from New Orleans to Mobile, is shown as follows:

	Class.													
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.	
Rail rates.....	50	87	25	18	15	15	12	15	12	10	15	18	25	
Water rates.....	44	33	31	27	23	12	10	12	13	8	16	14	10	

In the competition between the rail and water lines the tariffs show the rail rates ranged generally higher than the water rates, except in the third, fourth, and fifth classes, under which classes the bulk of the freight carried between these two cities would move. There was some testimony to the effect that formerly the rail rates were not maintained as published when competition was severe with the water lines, neither is it certain that the rates announced by the water lines were maintained. At all events, water transportation gradually declined, and at the date of the hearing carriage by water was very infrequent and cut but little figure as a competitor with the defendant. Some of the reasons for the decline and practical disappearance of water transportation, as disclosed by the testimony in this case, in addition to the results of the competition with defendant, are the slower service of the water lines, the labor troubles in connection with loading and unloading the vessels, inconvenient loading and unloading places for shippers as compared with centrally located freight stations and branch railroads to warehouses, and the want of proper docking facilities.

The advances shown from New Orleans to Mobile of 2 cents on the second class, 13 on the third, 13 on the fourth, 12 on the fifth, 1 on the sixth, and 5 on class E, were severely felt by certain shippers in New Orleans shipping to Mobile and adjacent territory, and especially those engaged in jobbing canned goods, lard, flour, coffee, oil, crackers, pickles, vinegar, beans, etc. New Orleans is an important distributing market for canned beans, handling, perhaps, from 400 to 500 carloads per year, and the increase in the rate on this article is extremely burdensome, if not practically prohibitory of shipping into New Orleans and out to Mobile.

The rate on paper was advanced from 18 to 31 cents, and that on stovepipe, tinware, tubs, and galvanized-iron tubes, from 18 to 31 cents, and it was shown that the manufacturers would have to absorb this advance. It was also shown that the advance of the rates on furniture, iron beds, etc., practically closed out the business with Mobile, as better rates were made from other manufacturing points, such as Atlanta, High Point, and Winston Salem, N. C.

The rates on bags, burlap, gunny, and jute were advanced, l. c. l., from 15 to 27 cents, and this was vigorously opposed. Strong protest on account of alleged discrimination against New Orleans was made with reference to cotton goods, it being asserted that other manufacturing points are given more favorable rates. Some of the rates upon cotton goods are as follows:

New Orleans to Montgomery, 321 miles, 55 cents; Montgomery to New Orleans, 38 cents; New Orleans to Mobile, 141 miles, 31 cents; Mobile to New Orleans, 18 cents; from Virginia and North and South Carolina points to Montgomery the rate is 43 and 46 cents; Augusta to Montgomery, 346 miles, 35 cents; Augusta to Mobile, 536 miles, 40 cents; New York to Montgomery, 69 cents; Boston to Montgomery, 69 cents; New York to Mobile, via water, 40 cents; Boston to Mobile, via water, 40 cents; New York to New Orleans, via water, 40 cents; New Orleans to New York, via water, 30 cents.

In many other instances on both class and commodity rates the advances caused serious interference with business and have produced loud protests on the part of the merchants shipping from New Orleans to Mobile and points basing thereon.

The advance of the rates from New Orleans to Pensacola was as follows:

Three cents in the third class, 6 cents in the fourth, 7 cents in the fifth, and 1 cent in the sixth class. This advance was not as heavy or as injurious to the merchants in New Orleans in their trade with Pensacola as the advance to Mobile, but they strongly protested against it, and it was shown that, proportionately, like conditions resulted from said advance as were produced by the increase in the rates to Mobile.

The rates from New Orleans to Mobile and Pensacola have been in effect, substantially unchanged, for over twenty years, and there was no evidence that they were not compensatory. They exceed the rates from New Orleans to other water transportation points, e. g., Natchez, Vicksburg, Greenville, and Memphis, where the distances are much greater. They also exceed the rates from Nashville, Memphis, Cincinnati, and Louisville to points where the distances are approximately the same. The rates between New Orleans and Mobile and New Orleans and Pensacola, in both directions, were identical until this advance occurred, which has disturbed the relation of rates between points where geographical and commercial conditions would seem to demand that they be put on an equality, not only with respect to the trade and commerce with each other, but also with respect to the outbound rates to the southeastern territory. Between other cities, e. g., New Orleans and Memphis, New Orleans and Greenville, New

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Orleans and Natchez, New Orleans and Vicksburg, the rates are the same in both directions.

With respect to the through rates from New Orleans to Montgomery, Selma, and Prattville, and to the southeastern territory, it was shown that the merchants of New Orleans have heretofore made ineffectual efforts to secure better rates to this territory, as higher rates were in effect from New Orleans to this territory than existed from distributing centers at greater distances west and north of said territory, the situation being such that New Orleans was cut off from the trade of this section as to many products and greatly restricted and burdened as to many others on account of the high rates of transportation.

The manufacturers and shippers of oil, paper, stovepipe, tinware, galvanized tube, furniture, soap, window glass, paints, hardware, and other articles of like kind in daily use, testified that they were unable to trade in the Montgomery and Selma territory on account of the high rates, and that upon former occasions they had made special efforts to build up a trade with cities located in this territory and points basing thereon, but in every instance they were compelled to abandon the fight on account of better freight-rate concessions from other markets, though at greater distances.

With respect to practically all of the commodities above enumerated, schedules of comparative rates and distances were filed corroborating complainant's contention.

The rates from New Orleans to Montgomery, Selma, and Prattville are higher in all the classes than the rates from other points typical of the situation in the southeast to Montgomery, Selma, and Prattville, where the distances are greater, e. g., Brunswick, Ga., Savannah, Ga., Charleston, S. C., Wilmington, N. C., and Nashville, Tenn. From New Orleans to certain stations just outside of Montgomery, on the Mobile & Ohio Railroad, the rates are less than the rates to Montgomery, and from some of the Virginia cities to Montgomery and Selma the rates are less than from New Orleans to Montgomery and Selma, though more than twice the distance. The rates from North Atlantic ports to points in southeastern territory basing on Montgomery are more favored when length of haul and the number of lines over which the traffic must be transported are taken into consideration, and the rate in cents per ton per mile on the average of the first six classes is much greater from New Orleans to Montgomery, Selma, and Prattville than they are from Memphis, St. Louis, and Louisville to said points.

The Cooley arbitration of 1886 has been strongly urged by defendant as a reason for the nonreduction of the present advanced rates. This arbitration established a relation of rates as between the several

Ohio and Mississippi river crossings, applying upon products from the territory north and west of those rivers destined to southern and southeastern territory, by fixing a basis for making rates from these several basing points to the southeastern territory with the object of maintaining an equitable relation and equality of the basing rate as between said points on goods transported to southeastern territory, but we do not understand that this arbitration undertook to fix the actual rates for carriage from the several basing points to destinations in this territory. However, if such were the case, the building of new railroads, competition, and other causes have forced many departures from the adjustment and the rates made under it, until it has become materially altered, and it is inevitable and proper that it should yield to meet new and changed conditions.

It was stated by the principal witness for the defendant that between points on its line where the through rate exceeded the combination of rates from point of origin to a competitive point and from said competitive point to destination, that shippers were given the benefit of the combination rate, and this provision appeared in special circulars and was very generally observed as a rule for the adjustment of freight rates; and such having been formerly the custom of the defendant, it would seem now to work no especial hardship upon it to reduce rates to the basis of the former combination.

Upon full hearing and consideration of all the facts, circumstances, and conditions appearing, it is the opinion of the Commission that the advance in these rates upon classes 2, 3, 4, 5, 6, and E from New Orleans to Mobile, and upon classes 3, 4, 5, and 6 from New Orleans to Pensacola, effective August 13, 1907, was not justified, and that the increased rates resulting therefrom are unjust and unreasonable to the extent that they exceed the former rates in effect immediately prior to August 13, 1907, on the said classes.

The Commission is also of the opinion that the through rates heretofore stated, in effect from New Orleans to Montgomery, Selma, and Prattville, on traffic moving through Mobile to said destinations, are unreasonable and unjust as applied to said classes to the extent that said through rates exceed the combination of locals from New Orleans to Mobile and from Mobile to said destinations, immediately prior to August 13, 1907, viz, class 2, 2 cents; class 3, 13 cents; class 4, 13 cents; class 5, 12 cents; class 6, 1 cent; and class E, 5 cents; also that the through rates from New Orleans to Montgomery, Selma, and Prattville, on traffic moving through Pensacola and thence to said destinations, are unjust and unreasonable to the extent that they exceed the amounts of the combination of locals from New Orleans to Pensacola and from Pensacola to said destinations, respectively, which were in effect immediately prior to August 13, 1907, viz, class 3, 3 cents; class 4, 6 cents; class 5, 7 cents; and class 6, 1 cent.

It is our conclusion, therefore, that the rates on classes 2, 3, 4, 5, 6, and E, from New Orleans to Mobile, should not exceed the following sums: Second class, 37 cents; third class, 25 cents; fourth class, 18 cents; fifth class, 15 cents; sixth class, 15 cents; Class E, 15 cents; that the rates on classes 3, 4, 5, and 6, from New Orleans to Pensacola, should not exceed the following amounts: Class 3, 35 cents; class 4, 25 cents; class 5, 20 cents; class 6, 15 cents; that the rates on classes 2, 3, 4, 5, 6, and E, from New Orleans via Mobile to Montgomery and Selma, should not exceed the following amounts: Second class, 77 cents; third class, 55 cents; fourth class, 42 cents; fifth class, 35 cents; sixth class, 35 cents; Class E, 39 cents; and from New Orleans via Mobile to Prattville should not exceed the following amounts: Class 2, 87 cents; class 3, 63 cents; class 4, 50 cents; class 5, 43 cents; class 6, 43 cents; and Class E, 44 cents; and that the rates from New Orleans via Pensacola to Montgomery and Selma should not exceed the following amounts: Class 3, 65 cents; class 4, 49 cents; class 5, 40 cents; and class 6, 35 cents; and that the rates from New Orleans via Pensacola to Prattville should not exceed the following amounts: Class 3, 73 cents; class 4, 57 cents; class 5, 48 cents; and class 6, 43 cents.

In regard to the commodity rates attacked in these proceedings certain adjustments and changes have been made therein by the defendant since the institution thereof with the view of correcting inequalities or excessive charges found to exist, which adjustments and changes are admitted to have removed the cause of complaint to some extent. It is impracticable in the present state of the record to determine satisfactorily what other changes if any respecting commodity rates should be made. These cases will be retained therefore for such further investigation and consideration of commodity rates involved as the facts and circumstances may seem to require.

An order will be entered in accordance with the foregoing conclusions.

No. 1004.
WEST END IMPROVEMENT CLUB
v.
OMAHA & COUNCIL BLUFFS RAILWAY & BRIDGE
COMPANY ET AL.

Submitted June 5, 1908. Decided November 27, 1909.

Complaint alleges that the 10-cent fare from Council Bluffs to Omaha is unreasonable and that it is unjustly discriminatory, because defendants give longer rides for 5 cents on lines which do not cross the bridge. Defendants allege that they are street railways and not amenable to the terms of the act to regulate commerce, and that to reduce the fares as prayed for would result in a net loss from the operation of the properties; *Held*, That defendants are common carriers, engaged in the interstate transportation of persons, and therefore amenable to the terms and jurisdiction of the act; that the record does not disclose justification for making the reduction prayed for, but that it is unreasonable to charge more than 10 cents for a trip between any point on defendant's lines in Council Bluffs and any point on defendant's lines in Omaha.

Walter I. Smith, G. H. Scott, and T. W. Blackburn for complainant.

John Lee Webster and Emmet Tinley for defendants.

REPORT OF THE COMMISSIONER.

CLARK, Commissioner:

Complainant is a voluntary improvement association, the membership of which consists of business men of Council Bluffs, Iowa.

The complaint assails as unjust, unreasonable, discriminatory, and preferential the fare of 10 cents per passenger in either direction between the cities of Omaha, Nebr., and Council Bluffs, Iowa, over defendant's bridge crossing the Missouri River, and prays "that no extra charge be made when in the course of interstate transportation passengers are carried over such bridge," and the establishment of a uniform fare of 5 cents per passenger.

The Omaha & Council Bluffs Railway & Bridge Company, hereinafter referred to as the Bridge Company, under authority of an act 17 I. C. C. Rep.

of Congress (chap. 356, 49th Cong., vol. 24) constructed and owns a railroad, wagon, and foot toll bridge over the Missouri River at Omaha, Nebr., and Council Bluffs, Iowa, and also a railway, which begins at the west end of the bridge, in Omaha, Nebr., and extends eastward to Council Bluffs, Iowa. The Bridge Company also owns the stocks and bonds of the Omaha, Council Bluffs & Suburban Railway Company, a street-railway line in Council Bluffs. The Omaha & Council Bluffs Street Railway Company, hereinafter referred to as the Street Railway Company, owns and operates all of the street-railway lines in Omaha, Nebr. In January, 1903, the Street Railway Company leased all of the properties of the Bridge Company for a period of years and now operates all the lines of both systems.

The toll for foot passengers crossing the bridge is 5 cents; therefore adding the street railway fare of 5 cents to the bridge toll makes the charge for transportation when a passenger crosses the bridge on the railway.

The single fare is 10 cents; but nontransferable, limited commutation tickets, each entitling the holder to 30 rides, are sold to all persons desiring them for \$1.50.

The defendants contend that:

(1) Complainant is not a proper party to maintain this action.

(2) The defendants, being street railway companies and not commercial railroads, are not railroads within the meaning of, and therefore not subject to the provisions of, the act to regulate commerce.

(3) The fare of 10 cents is violative of no provision of the act to regulate commerce.

(1) The decisions of the Commission and the law itself which provides that "no complaint shall be dismissed because of absence of direct damage to complainant" stand for the principle that complainant is entitled to standing as such under the act.

(2) The first section of the act provides that its terms shall apply "to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad," and that "the term 'railroad,' as used in this act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad," etc. Counsel for defendant admits that the Bridge Company and Street Railway Company are common carriers engaged in interstate transportation. The contention in this connection is that they are not railroads within the meaning of the law. In brief and argument defendants cite decisions of the courts in which it has been held that street railways are not railroads and that statutes relating to railroads do not include nor apply to street railways unless street railways are specifically mentioned.

The decisions which have been cited by defendants, generally speaking, refer to questions of whether or not, where there is a general railroad law and a specific act of the legislature distinctly naming street railways, the general law refers to street railroads; whether a fellow-servant law was applicable to street railways; whether a board of railroad commissioners has jurisdiction over street railroads; whether a statute giving laborers a lien upon railroads also applied to street railways; whether a street railway was a railroad within the meaning of the laws of Indiana regulating crossings.

Unquestionably many or all of those decisions are eminently sound under the facts then considered. *Masillon Bridge Co. v. Cambria Iron Co.*, 59 Ohio St., 179, holds that the word "railroad" as used in the statute relating to railroads does not include street railroads, the statutes of the state relating to railroads and to street railroads being separate and distinct. A decision upon such a state of facts can not be controlling here. If there were a federal law specifically applying to street railroads none would contend that the present act to regulate commerce governed street railways. But here the act, recently amended, in plain terms applies to any common carrier engaged in the transportation of persons by railroad from one state to another.

In *Fidelity Loan & Trust Co. v. Douglas*, 104 Iowa, 532, in which it was held that as used in the laws of that state the word "railroad" does not include "street railroads," the court expressly stated that the interpretation there adopted applied to section 1309 of the code and not to section 2075, which applies "in terms to street-railway corporations." Judge Waterman, dissenting, said in reference to section 1309:

Being remedial in its character, the section should receive a broad and liberal construction. In interpreting such statutes, it is said: "The old law, the mischief, and the remedy must be kept in mind. That which is within the mischief intended to be remedied is considered within the statute, though not within the letter; and that which is not within the mischief is not within the statute, though within the letter." (Citing authorities.) Here the railway mortgage is clearly within the mischief, and just as clearly within the letter of this remedial section. To restrict the statute to a particular class of "mischief makers," rather than apply it to the "mischief," by whomsoever done, is to adopt a narrow and illiberal rule of construction.

In Ohio, by statute, an interurban electric railroad is classed as a street railroad, but in *Cincinnati, Lawrenceburg & Aurora Electric Street Railroad Company v. Lohe*, 68 Ohio Stat., 101, on an action brought to recover damages for the alleged negligent killing of plaintiff's intestate, it was held:

It seems reasonably clear that while operating the cars of an interurban railroad within a municipality the regulations and powers of a street railroad

company are applicable; but when it comes to running cars of such railroads in the open country, upon a track substantially the same as the track of a steam railroad, and at a high rate of speed, it would seem that the same rules as to negligence and contributory negligence should prevail as are applicable to steam railroads.

It has been held that statutes giving certain powers to railroads include street railroads operated by horsepower; that a statute authorizing the consolidation of railroads is applicable to street railroads; that statutes making the proprietors of any "railroad" liable for injuries caused by the negligence of its servants, prohibiting the obstruction of "railroad tracks," and taxing the property of "any railroad company" include street railways; that street railways are within a statute requiring some person on the locomotive to keep a lookout and requiring a whistle to be sounded to prevent accidents, etc. Many decisions both pro and contra may be cited, but the state of the law is set forth in *Elliot on Railroads*, section 6:

It is not easy to reconcile all of the decisions and about all that can be said is that the question as to whether a street railway is included in the term "railroad" in any particular case is determined largely by the context or connection in which the term is used.

In *Massachusetts Loan & Trust Co. et al. v. Hamilton*, 88 Fed. Rep., 588, it is said:

The meaning of the word must always depend upon the context and the legislative intent of the statute in which it is used, from the occasion and necessity of the law, from the mischief felt, and the object and remedy in view.

In *Malott v. C. & E. St. L. Electric R. Co.*, 108 Fed. Rep., 313, Judge Grosscup said:

There is nothing in the acts of 1872 and 1889 that restricts railroads therein mentioned to the use of steam as a motive power, or prevents existing steam roads from changing their motive power to that of electricity. There is nothing in these acts that necessarily or fairly excludes its application to electrical roads, as they now exist; indeed these electrical roads, in the speed of their trains, in the distance traveled, and in the capabilities for transportation, are well within the field of public utilities hitherto occupied by the steam roads alone. We can not conceive that these facts, so far, at least, as they are reasonably applicable, were not meant to cover every form of railroad that, in the march of events, answers the purposes of general transportation.

This Commission in *Willson v. Rock Creek Ry. Co.*, 7 I. C. C. Rep., 88, held that a street railway company engaged in transporting suburban passengers between points in the District of Columbia and points in an adjoining state is subject to the provisions of the act, it was there said:

We can not sustain defendant's contention that the act to regulate commerce applies only to the ordinary steam railways by which interstate traffic is mainly carried, and that street surface roads for urban and suburban passenger travel

are exempt from its provisions. It may be conceded that this class of railroads was not specifically within the contemplation of the framers of that law, for the evils which it was intended to remedy would, in the nature of the case, but rarely arise in the management of such roads and their dealings with the public. But the terms of the statute in this regard are broad and general, and it contains no exception indicating a design to exclude from its operation those interstate roads which are constructed upon public highways, to provide the means for local passenger transportation in the streets of towns and cities and their various suburbs. We see no reason to doubt that the authority of this enactment may be invoked for the regulation of carriers like the defendant, if their business is actually interstate, whenever occasion arises for subjecting them to its restraints and requirements.

Since that decision was rendered numerous and important amendments to the act have been enacted. None of those amendments contain any suggestion that is in conflict with the interpretation that had been placed upon the jurisdiction of the act. On the contrary, amendments to section 1 of the act, which will presently be noticed, strengthen and reinforce the view adopted by the Commission. That view must therefore be considered a part of the present act.

In *C. & N. Elec. R. R. Co. v. I. C. R. R. Co.*, 13 I. C. C. Rep., 27, it was stated that—

The act makes no distinction between railroads that are operated by electricity and those that use steam, nor has the Commission thought at any time to make such distinction. Both are subject to the act when engaged in interstate transportation and are entitled to equal consideration in any controversy before us. Moreover, progress in the science of electricity and the rapid increase of new devices for its application have led many practical railroad men to think that we may be measurably near its general use as the chief motive power in transportation.

In the instant case it should be remembered that the defendants have the characteristics of an interurban line as well as of a street railway. They operate 136 single-track miles of road; the rails are not all laid in public streets and highways, but for some distance run over private right of way; they operate over the bridge across the Missouri River, and through sparsely settled sections over expensive culverts not conforming to the level of the streets or roads; they carry the United States mail and do not serve the needs of a single city and its suburbs, but of two cities and several towns, villages, and resorts. As was said in *Birmingham Mineral R. Co. v. Jacobs*, 92 Ala., 187, 12 L. R. A., 830:

A railroad * * * running beyond the corporate limits of any city or town and through counties is not and necessarily can not be a street railway, within the meaning of the constitution and the provisions of the code in regard to street railways; and after leaving the city limits, as we have shown, they are no longer street railways subject to municipal regulations, and if not railroads within the meaning of the general law, we may well inquire what kind of railroads are they and by what laws are they governed? Can it be presumed

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that the legislature intended to provide for the incorporation of a species of railroad companies *sui generis*, not subject to any law except the common law for common carriers, while the duties and liabilities of all other railroad companies are regulated and controlled by statutory enactments?

So we must determine from the context, scope, and intent of the act to regulate commerce whether or not its provisions are properly applicable to defendant's railways.

In the debates in the Congress the paramount questions discussed were abuses in connection with freight transportation; unjust discrimination, unreasonable rates, etc. But this fact does not furnish an argument for excluding from the provisions of the law common carriers engaged solely in the interstate transportation of passengers. It was stated in the debates that the law was not intended to apply to "street railways." We must, however, assume that the street railways of that day, and not the interurban lines of this day, were in mind when that statement was made. Some of the largest railroads bear the corporate title "Railway Company." Other roads of identical character and kind use the title "Railroad" or "Railroad Company." The words "railway" and "railroad" are completely synonymous and no significance can be attached to the choice of either name or to the use of either word in a statute, decision, or discussion. The words of the act "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad" indicate that a common carrier engaged in the interstate transportation of either and not necessarily of both is subject thereto. The relative importance of freight and passenger transportation necessarily increased the attention given to the former and minimized the discussion of the latter.

The term "railroad" as defined in the act of 1887 is enlarged by the provisions of the act of 1906 by the addition of the words "and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property." Note the distinction and the comprehensive language: Those "used or necessary" "in the transportation of persons or property" and "in the transportation or delivery of any of said property." A switch, spur, track, or terminal facility used or necessary exclusively in the transportation of persons is as much subject to the act as are "freight depots, yards, and grounds" used or necessary "in the transportation or delivery of any of said property."

With general uniformity throughout the act the use of the words "passengers or property" clearly denotes that carriers of either the one or the other or both are subject to its provisions. Certainly the words of the statute are broad and comprehensive enough to include

interstate interurban railroads, and there is nothing in the law which indicates an intent to exclude them. No one questions the jurisdiction of the act over interurban lines which enter the streets of the city of Washington and transport persons to and from adjoining states. The street railways which do not extend beyond the limits of the District of Columbia are governed by other laws. Interurban lines are becoming more and more an important factor in the transportation of freight as well as of passengers. It can not be said that the act controls as to the transportation of property but does not apply to the transportation of persons. If interurban lines were to be exempted from the requirements of the act on the ground that they are street railways it would be impossible to so administer the law as to correct the evils and the mischief at which it was aimed.

Defendants' contention that to hold that the terms "common carrier" and "railroad" include street railroads would "lead to many conflicting embarrassments in the construction and application of the act" does not appeal strongly to us. In every broad and general law there are provisions which necessarily and reasonably are not applicable in particular instances. In *Malott v. C. & E. St. L. Electric R. Co.*, *supra*, it was held that the acts applied "so far, at least, as they are reasonably applicable." Pipe lines are specifically made common carriers, subject to the provisions of the act to regulate commerce, and yet no one would consider it other than absurd to prohibit a pipe line from giving an interstate free pass for a passenger, or to require it to furnish cars, to publish refrigeration or icing charges, to construct and maintain a switch connection, or to do many of the things which are required of railroads. Similar observations could be made as to express companies, sleeping-car companies, and boat lines engaged under a common control, management, or arrangement with a railroad in the interstate transportation of persons or property. Whether or not a particular provision of the law applies to a particular common carrier subject to the law must be determined from the facts.

Even admitting that in its popular acceptance the word "railroad" usually applies to standard commercial railroads, we think it plainly evident that it was the intent of the Congress to include within the provisions of the act any and all common carriers engaged in interstate carriage by railroad. No provision of the law is repugnant to that thought, and there are no qualifying words which suggest a different conclusion. The great body of strictly street railways are engaged in serving purely local needs, lie wholly within the confines of a single state, and, by the express terms of the statute, are not within our jurisdiction because not engaged in interstate transportation. It would be a narrow, strained, and illiberal construction to

hold that designating an interurban railroad a "street railway" was sufficient to excuse such railroad, when engaged in interstate transportation, from the operation of the law. So far as the practices of common carriers of passengers are concerned, interurban railroads might as certainly, to the same extent and in the same manner as any other carrier or railroad, cause the abuses denounced by the law; they might discriminate as unjustly and charge as unreasonable fares as the railroads denominated as commercial. It follows that they are within the "mischief felt and the object and remedy in view." If interstate, they are clearly outside the jurisdiction of the individual state, and where they are "common carriers engaged in the transportation of passengers or property," as specified in the act, we entertain no doubt of their amenability to its provisions.

Defendants argue that for Council Bluffs, a municipality of the state of Iowa, to fix by ordinance or franchise the maximum rate of fare to be charged for a continuous trip from that city to points in the state of Nebraska would be a regulation of interstate commerce and that such an ordinance could have no extraterritorial effect. Granted; but if the contention is correct that defendants are not subject to the act to regulate commerce, the reasonableness of the fares could be determined only by the common law or by Congress. It is not conceivable that Congress intended to leave the great number of interurban railway companies engaged in the interstate transportation of passengers to regulation by the inadequate remedies of the common law.

In this particular case, the charter granted March 3, 1887, to the Bridge Company provides "and Congress reserves the right, at any time, to regulate, by appropriate legislation, the charges for freight and passengers over said bridge." Section 26 of the amended act provides "that all laws and parts of laws in conflict with the provisions of this act are hereby repealed." The question naturally arises whether this section operates as a repeal of the charter provision.

The general rule of construction is that a general statute will not repeal the provisions of a former one which is special or particular unless there is something in the general law or in the course of legislation upon its subject-matter that makes it manifest that the legislature contemplated and intended a repeal. The law does not favor a repeal by implication, and where it is possible to so construe the statutes as to maintain the integrity of both it must be done. In other words, it is only where there is irreconcilable conflict or repugnancy that the special or particular statute falls under the repealing clause of the general statute. In the *Nebraska Freight Rate case*, 64 Fed. Rep., 165, and 169 U. S., 466, the circuit court of the United

States for the district of Nebraska and the United States Supreme Court held that the state could, until Congress should prescribe the rates to be charged, regulate intrastate rates of a road which had received a charter from the United States in which there was contained a reservation to the United States for fixing rates. See also the *Reagan case*, 154 U. S., 413.

In *Daviess v. Fairbairn*, 3 How., 636, the Supreme Court said that if a subsequent statute be not repugnant in all of its provisions to a prior one, yet if the latter statute clearly intends to prescribe the only rule which shall govern it repeals the prior one. The principle that where the regulation of commerce requires a uniform rule the power of Congress is exclusive, but where it requires different rules in different localities the state may legislate, but only in the absence of congressional legislation, is well established. It seems undoubted that the act to regulate commerce was clearly intended by the Congress to prescribe the only rule as to the regulation of interstate rates and that it should and does supersede different rules in prior statutes.

In *Texas & Pacific Ry. v. Abilene Cotton Oil Company*, 204, U. S., 426, the court said:

Indeed, the recognition of such a right is wholly inconsistent with the administrative power conferred upon the Commission and that duty, which the statute casts upon that body, of seeing to it that the statutory requirements as to uniformity and equality of rates is observed. Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforcement of one rate in one jurisdiction and a different one in another, would destroy the prohibitions against preferences and discriminations, and afford, moreover, a ready means by which, through collusive proceedings, wrongs which the statute was intended to remedy could be successfully inflicted.

Here there is no difficulty about so construing the statutes as to preserve the integrity of both. Congress reserved the right to regulate the charges of the Bridge Company by appropriate legislation. Instead of specifically fixing those charges by statute the Congress "by appropriate legislation" delegated that function and authority to the Commission. So that whether or not it be held that technically the act to regulate commerce repealed the reservation in the act which granted the charter of the Bridge Company, the present jurisdiction of the Commission over the interstate transportation charges of the defendants is clear.

— We now come to a consideration of the reasonableness of the fare. The petition attacks the reasonableness of the fare from Omaha to Council Bluffs or from Council Bluffs to Omaha. The local fare in Omaha and in Council Bluffs is 5 cents. From the west end of the bridge the line in Omaha passes westward on Douglas to Fourteenth street, south upon that street to Howard, east to Eleventh, north to

Douglas, and eastward back to the bridge. The fare from Council Bluffs to any point on this loop is 10 cents, and the fare from any point on the loop to any other point in Omaha is 5 cents. The fare from any point on the loop, across the bridge and to any point in Council Bluffs (with the exception of Courtland Beach, which, on account of the Missouri River changing its course, is on the west side of the river, but within Council Bluffs), is 10 cents. The reasonableness of the 10-cent fare and the reasonableness of confining it to points on the loop are put in issue in these proceedings.

The complainant contends that the unreasonableness and discriminatory nature of the fare of 10 cents is shown by the fact that for materially greater distances than that from Fourteenth and Farnam streets in Omaha to any point in Council Bluffs, or the reverse, the fare is but 5 cents; that it is only when the bridge is crossed that the 10-cent fare is charged. It is also contended that at other points of crossing of the Missouri or Mississippi rivers, where conditions are similar to those involved in this case, a fare of 10 cents entitles passenger to transfer to any point in either city.

Defendants argue that to reduce the fare to 5 cents would have the effect of abolishing the bridge toll in favor of persons riding in the cars and leave it in force as to the man who elected to walk over the bridge; that along the line from the east bank of the Missouri River to the city of Council Bluffs for a distance of about 3 miles there is a large territory which is but sparsely settled and from which but little revenue is derived; that a reduction of the fare to 5 cents would result in a great reduction of revenue; that notwithstanding the profit for the year 1907 of \$49,844.35 on the bridge company's property a reduction of the fare to 5 cents would be disastrous and would result in a net loss of \$53,056.55, there being no evidence that a reduction of the fare would be followed by increased travel; that there is greater hazard in the operation of the lines over the bridge than upon the surface; that the commutation tickets are sold on a plan sufficiently liberal to answer the demands of the community; that it is the prevailing custom to charge 10 cents single fare on street-railway lines between cities on the opposite sides of the Mississippi and Missouri rivers, including bridge fare; that the right to charge a 10-cent fare, including the bridge toll, has been recognized by Council Bluffs in the charters granted to the respective street-railway companies whose franchises and lines compose the present lines operated in Council Bluffs by the defendants, and that the fare across the river on railway bridges between Omaha and Council Bluffs is 25 cents.

It appears that prior to leasing the Bridge Company's properties to the Street Railway Company the Bridge Company was operated at a loss, and that it was operated at a loss during the first two years

under the lease. Beginning with the year 1905, however, the Bridge Company yielded an annual profit from operation, and that profit increased each year. This is accounted for by economies in management, such as maintenance of one central power house, central shops, one executive organization, etc., and the development of profitable business.

Comparisons are introduced showing the relative conditions of operation, travel, fares, and service in the instant case and at other places where bridge lines connect cities on opposite banks of the Missouri or Mississippi rivers. Statements of defendant's capitalization, earnings, and expenses have also been submitted, which show, on the whole, liberally profitable returns.

The capitalization of the Bridge Company is entirely separate and distinct from that of the Street Railway Company. If the properties were operated separately, neither of them would be expected to charge less than a 5-cent fare. Such combination fare of 10 cents would doubtless, however, entitle passenger to transportation to or from points in Omaha other than those located upon the loop.

A full hearing has been had in this cause; we have carefully considered the testimony and the record in the case, and we are of the opinion that a reduction of defendants' fare of 10 cents to 5 cents would not be justified, but that limiting the 10-cent fare to points on the loop in Omaha is unjust and unreasonable, and that the fare from Council Bluffs, not including Cortland Beach, to any point on defendants' lines in Omaha or from any point on defendants' lines in Omaha to Council Bluffs, not including Cortland Beach, should not exceed 10 cents for a continuous trip or for a trip upon which passenger conforms to proper and reasonable regulations governing use of transfer tickets if transfer is required.

An order will be entered in accordance with these views.

PROUTY, Commissioner, concurring:

In *Willson v. Rock Creek Ry. Co.*, 7 I. C. C. Rep., 83, I expressed the opinion that the act to regulate commerce did not apply to ordinary street railways. I still entertain the same opinion, but a majority of the Commission thought otherwise in that case, and for the twelve years since we have uniformly adhered to that holding. It seems to me that this should be accepted as the settled law for this body until reversed by a majority of the Commission or disapproved by a court of competent jurisdiction. I therefore concur in the disposition of this case. **KNAPP, Chairman**, and **COCKRELL, Commissioner**, instruct me to say that they also doubt upon the point of jurisdiction, but concur for the reason above stated.

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CLEMENTS, *Commissioner*, concurring:

While concurring fully in the conclusion of the Commission respecting its jurisdiction of the defendants and the questions involved, and approving the order made against the limitation of the 15-cent fare referred to, I do not feel satisfied that the 10-cent fare complained of is reasonable and just. Respecting this question it does not appear to me that sufficient investigation has been made for a satisfactory determination of the matter. A valuation of the properties involved would have been greatly helpful, and, in my judgment, should have been made in view of the meager and unsatisfactory showing contained in the record as it stands.

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No. 2149.

J. C. KINDELON, DOING BUSINESS UNDER THE NAME OF
THE STANDARD HARDWOOD LUMBER COMPANY,

v.

SOUTHERN PACIFIC COMPANY ET AL. AND 41 OTHER
CASES DISPOSED OF IN THE ORDER ENTERED HEREIN,
WHEREIN THE PARTIES ARE NAMED, WHICH CASES
ARE INDICATED BY DOCKET NUMBERS AS FOLLOWS:
2150, 2197, 2229, 2230, 2231, 2233, 2234, 2236, 2247, 2248, 2263,
2264, 2267, 2268, 2269, 2272, 2274, 2275, 2276, 2277, 2302, 2303,
2304, 2305, 2306, 2307, 2308, 2309, 2310, 2312, 2319, 2320, 2321,
2322, 2323, 2334, 2335, 2341, 2342, 2343, AND 2345.

Submitted July 12, 1909. Decided November 26, 1909.

Defendants' prior rate of 85 cents per 100 pounds for the transportation of hard-wood lumber in carloads from various points along and west of the Mississippi River to San Francisco, Cal., and other Pacific terminals, found unreasonable; but their present rate of 75 cents per 100 pounds for such transportation held reasonable. Reparation awarded. *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668, cited.

Lester G. Burnett and J. O. Bracken for complainant.

T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

E. B. Peirce and E. W. Camp for St. Louis, Iron Mountain & Southern Railway Company; St. Louis, Kansas & Colorado Railway Company; Chicago & Eastern Illinois Railroad; Chicago, Rock Island & Pacific Railway; Chicago, Rock Island & Gulf Railway; and Chicago, Rock Island & El Paso Railway.

F. C. Dillard and C. W. Durbrow for Southern Pacific Company; Union Pacific Railway Company; Galveston, Harrisburg & San Antonio Railway; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; Missouri & North Arkansas Railroad Company; Missouri Pacific Railway Company; Denver & Rio Grande Railroad Company; Colorado Midland Railway Company; and El Paso & Southwestern Railroad Company.

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REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These complaints, heard at the same time, involve the reasonableness of rates for the transportation of hard-wood lumber in carloads from various points along and west of the Mississippi River to San Francisco, Cal., and other Pacific terminals. Reparation is asked in each complaint. Some of the complaints heard at the same time involve different principles from those applicable to the cases immediately under consideration and will be disposed of in separate reports.

Although the shipments covered by the various complaints moved over different routes, the questions involved are the same in each, and they will be disposed of in this report. Each complaint has reference to one or more carload shipments of hard-wood lumber, and contains an allegation that the rate charged and collected by the defendants was unreasonable and unjust. At the hearing reliance was had by the complainants upon the report and findings of the Commission in the case of *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668, to establish the charge that the rate exacted was unreasonable. In the case referred to the Commission found that the rate of 85 cents per 100 pounds on hard-wood lumber in carloads from Chicago and Chicago points and from Mississippi River points, including Memphis, Tenn., to Pacific terminals was excessive and should not exceed 75 cents per 100 pounds. The complainants in that case were allowed reparation in the amount of the difference between the rate actually paid, to wit, 85 cents, and the rate of 75 cents, which was found to be reasonable, and was therefore established as the maximum rate to be thereafter charged. Reparation was allowed from the date of filing the petition, June 28, 1907. The order of the Commission in that case was obeyed, by the defendants.

It appears that for many years carriers maintained the same rate to Pacific terminals on hard-wood lumber shipments from Chicago and Chicago-rate territory, Mississippi River common points, and Missouri River common points, as well as all points in Arkansas, Oklahoma, Missouri, and Nebraska. When the order in the *Burgess case* was entered with respect of Chicago and Chicago-rate territory and Mississippi River points as far south as Memphis, the carriers subsequently put into effect the 75-cent rate and made it applicable to all the territory to which the 85-cent rate had been applicable. Points west of the Mississippi River are intermediate between the river and the Pacific coast. In supplement 65 to Transcontinental Freight Bureau Tariff, I. C. C. No. 371, effective August 1, 1908, the 75-cent rate is made applicable on shipments of hard-wood lumber from all

the territory above described. We found in the *Burgess case* that the 85-cent rate from Mississippi River points was unreasonable. The same reasons induce the conclusion that the charge of 85 cents per 100 pounds from and to the points involved in this complaint should not exceed 75 cents per 100 pounds. We find that the shipments herein were made under substantially similar circumstances and conditions as those considered in the *Burgess case*.

It is contended by the defendants that no reparation should be allowed in the cases now under consideration, because complaint was not made to the Commission until after the report was made in the *Burgess case*. This contention we can not sustain. The right to reparation is not confined to shipments made by parties to any given proceeding, but extends to all shipments moving under the same circumstances and conditions and charged for on the basis found to be unlawful by whomsoever made. *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C. Rep., 199, 205.

At the hearing no showing was made by the defendants that shipments made by these complainants were under different circumstances and conditions from those considered in the *Burgess case*. The shipments were made from and to points between which the 85-cent rate was applicable, and the shippers were therefore charged what the Commission found and finds to be an unreasonable rate to the extent that such rate exceeded 75 cents. Since these shipments moved the carriers have established a lower rate from and to the points here involved. Upon consideration of the fact that the shipments in this case were from points involved in the *Burgess case* or from points intermediate, and that they moved under similar circumstances and conditions, for reasons given in the *Burgess case* we find that the rate of 85 cents charged and collected by the defendants on carload shipments of hard-wood lumber from the points of origin and to the points of destination involved is, and was at the time the shipments in question moved, unreasonable to the extent that such rate exceeded 75 cents per 100 pounds. The only difference between the shipments here involved and those considered in the *Burgess case* is that the shippers of the freight reside in California in this case, and in the *Burgess case* they resided at Memphis or at points on the Mississippi River. Most of the shipments here involved moved from points of origin farther west and were therefore hauled shorter distances.

It is argued that the complainants herein have waited an undue length of time and reparation should not be allowed them prior to the date of filing their respective complaints. With this contention we are not able to agree. The complaints were all filed within the period of limitation provided by the statute and may not properly

therefore be considered to have been filed out of time. Under all the circumstances we do not find that complainants are fairly to be charged with laches.

It is further insisted that reparation should not be allowed on shipments made prior to the date of the filing of the complaint in the *Burgess case*. We are in accord with this contention. The award with respect of allowance of reparation in the *Burgess case* was not made with reference to the limitation provided by the statute. The date back of which reparation would not be allowed was fixed at the date of the filing of the complaint. Were we to allow reparation in these cases with respect of the date of the payment of the freight, for which complainants contend, we would prefer some of these complainants to some of those in the *Burgess case*. These complainants certainly stand in no better position than the complainants in that case and reparation herein will not be allowed on shipments made prior to June 28, 1907, the date the *Burgess* complaint was filed.

It is also contended by the defendants that no sufficient evidence was submitted at the hearing of these complaints to show that the 85-cent rate exacted by the defendants was unreasonable. The complainants introduced bills of lading showing the movement of shipments of hard-wood lumber from points on the Mississippi River or from points west thereof intermediate between the river and Pacific terminals. From all these points to the Pacific terminals the 85-cent rate was applicable prior to the conclusion of the Commission in the *Burgess case*. Thereafter the defendants reduced the rate to 75 cents, applicable to all the territory from which the shipments here involved were made. It follows, we think, that when it was found that the 85-cent rate was unreasonable from Mississippi River points that it was also unreasonable from all points in the territory which took the same rate on traffic transported under similar circumstances and conditions. Under these circumstances when complainants introduced the evidence of the movement which we find to have been made under the same circumstances and conditions as the shipments in the *Burgess case*, they made a prima facie case. This placed the burden upon the defendant carriers of showing that the shipments in question did not fall within the principles announced in the *Burgess case*. They might have shown that the shipments herein were made under different circumstances and conditions or that the reasons given in the *Burgess case* for the reduction of the rate from and to points therein considered had no application to the points here involved, if such were the facts. No evidence, however, was submitted by them. In this record the case presented by complainants was in no way assailed by the defendants.

The defendants further contend that the complainants herein have not shown that they were damaged. It is well settled that repara-

tion in any given case is due the person who has been required to pay an unlawful charge as the price of transportation. The shipper who has been charged an unlawful rate and who is the owner of goods transported is entitled to repayment without the imposition of the impossible task upon the Commission of ascertaining the ultimate profits accruing from the business of the shipper. Moreover, the owner of the freight who has been required to pay an unreasonable rate is entitled, upon proper complaint and showing, to reparation irrespective of the profits accruing from his business.

The further contention is made by the defendants that some of the carriers here involved were not defendants in the *Burgess case* and that no order based upon a finding in that case could properly be made against them. The answer to this is that all carriers, parties to these complaints, were duly notified of the hearing in these cases and full opportunity was given them to make any showing why reparation should not be awarded against them. None of the carriers not parties to the *Burgess case* appeared at the hearing in San Francisco. They have had their day and can not now be heard to say that no order can properly be made in these cases which may require them to pay their share of reparation herein awarded. Furthermore, the findings herein are not made solely upon the conclusions in the *Burgess case*, but upon facts and circumstances which warrant us in concluding that the charges made for the shipments involved herein were unreasonable.

In each of the cases here involved our findings and conclusions are further stated as follows:

In case No. 2149, J. C. Kindelon, doing business under the name of the Standard Hardwood Lumber Company, v. Southern Pacific Company; The Texas & Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Arkansas Southwestern Railway Company; complainant on August 10, 1907, shipped from Okolona, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The weight of the shipment was 46,210 pounds, and the charges at 85 cents per 100 pounds amounted to \$392.70. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds, and that complainant is entitled to reparation from these defendants in the sum of \$46.20, with interest.

In case No. 2150, J. C. Kindelon, doing business under the name of the Standard Hardwood Lumber Company, v. Southern Pacific Company; Union Pacific Railroad Company; and Missouri, Kansas & Texas Railway Company; complainant on September 13, 1907, shipped from Wagoner, Okla., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 48,700 pounds, and the charges at 85 cents per 100 pounds amounted to \$413.95. We are

of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds, and that complainant is entitled to reparation from defendants in the sum of \$48.70, with interest.

In case No. 2197, *White Brothers v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; El Paso & Northeastern Railroad Company; El Paso & Rock Island Railway Company; The Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & El Paso Railway Company; and The Chicago, Rock Island & Pacific Railway Company*; complainant on May 28, 1907, shipped from Devall's Bluff, Ark., to San Francisco, Cal., 4 carloads of hard-wood lumber. As these shipments were made prior to June 28, 1907, the complaint for reasons above given will be dismissed.

In case No. 2229, *Allen & Higgins Lumber Company v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas & Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company*; complainant on October 2, 1907, shipped from Portland, Ark., to San Francisco, Cal., one carload of ash lumber. The shipment weighed 55,500 pounds and the charges at 85 cents per 100 pounds amounted to \$471.75. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from these defendants in the sum of \$55.50, with interest.

In case No. 2230, *Allen & Higgins Lumber Company v. Southern Pacific Company; Union Pacific Railroad Company; The Chicago, Rock Island & Pacific Railway Company; and St. Louis & San Francisco Railroad Company*; complainant on September 5, 1907, shipped from Big Bay, Ark., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 40,000 pounds and the charges at 85 cents per 100 pounds amounted to \$340. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$40, with interest.

In case No. 2231, *Allen & Higgins Lumber Company v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas & Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company*; complainant on March 14, 1908, shipped from Helena, Ark., to San Francisco, Cal., one carload of rough hard-wood lumber. The shipment weighed 49,100 pounds and the charges at 85 cents per 100 pounds amounted to \$417.35. We are of opinion and find that the charge of 85 cents

per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$49.10, with interest.

In case No. 2233, *Allen & Higgins Lumber Company v. The Atchison, Topeka & Santa Fe Railway Company and St. Louis & San Francisco Railroad Company*; complainant on April 19, 1907, shipped from Burdette Junction, Ark., to San Francisco, Cal., one carload of oak lumber. As this shipment was made prior to June 28, 1907, complaint for reasons above given will be dismissed.

In case No. 2234, *Allen & Higgins Lumber Company v. The Atchison, Topeka & Santa Fe Railway Company; The Missouri Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company*; complainant on July 1, 1908, shipped from Portland, Ark., to San Francisco, Cal., one carload of hard-wood lumber. The shipment weighed 42,800 pounds and the charges at 85 cents per 100 pounds amounted to \$363.80. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$42.80, with interest.

In case No. 2236, *Allen & Higgins Lumber Company v. The Atchison, Topeka & Santa Fe Railway Company and St. Louis & San Francisco Railroad Company*; complainant on May 10, 1907, shipped from Burdette Junction, Ark., to San Francisco, Cal., one carload of oak lumber. As the shipment moved prior to June 28, 1907, complaint for reasons given above will be dismissed.

In case No. 2247, *Allen & Higgins Lumber Company v. The Atchison, Topeka & Santa Fe Railway Company and St. Louis & San Francisco Railroad Company*; complainant on February 15, 1908, shipped from Jonesboro, Ark., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 66,740 pounds and the charges at 85 cents per 100 pounds amounted to \$567.29. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$66.74, with interest.

In case No. 2248, parties to which are hereinafter named, complainant on September 13, 1907, and September 11, 1907, respectively, shipped from Shults, Ark., to San Francisco, Cal., a carload of oak lumber. The shipments weighed in the aggregate 92,280 pounds, and charges at 85 cents per 100 pounds amount to \$734.88. We are of the opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents, and that the complainant is entitled to reparation from the defendants in the sum of \$92.28, with interest.

In case No. 2263, *Allen & Higgins Lumber Company v. The Atchison, Topeka & Santa Fe Railway Company and St. Louis & San Francisco Railroad Company*; complainant on April 18 and April 23, 1907, respectively, shipped from Big Bay, Ark., to San Francisco, Cal., one carload of oak lumber. As shipments moved prior to June 28, 1907, complaint for reasons given above will be dismissed.

In case No. 2264, *Allen & Higgins Lumber Company v. The Atchison, Topeka & Santa Fe Railway Company and St. Louis & San Francisco Railroad Company*, complainant on April 24, 1907, shipped from Memphis, Tenn., to San Francisco, Cal., a carload of oak lumber. As the shipment moved prior to June 28, 1907, the complaint for reasons given above will be dismissed.

In case No. 2267, *Allen & Higgins Lumber Company v. The Atchison, Topeka & Santa Fe Railway Company; The Missouri Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company*; complainant shipped on different dates four carloads of oak lumber from Helena, Ark., to San Francisco, Cal. Three of the shipments were made prior to June 28, 1907, and for reasons above given they will not be considered. One carload was shipped June 29, 1907. The weight of this shipment was 43,100 pounds and the charges at 85 cents per 100 pounds amounted to \$366.35. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$43.10, with interest.

In case No. 2268, *Allen & Higgins Lumber Company v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; El Paso & Northeastern Railroad Company; El Paso & Rock Island Railway Company; The Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & El Paso Railway Company; and The Chicago, Rock Island & Pacific Railway Company*; complainant on April 10, 1907, shipped from Forrest City, Ark., to San Francisco, Cal., one carload of oak lumber. As the shipment moved prior to June 28, 1907, for reasons above given the complaint will be dismissed.

In case No. 2269, *Allen & Higgins Lumber Company v. Southern Pacific Company; Union Pacific Railroad Company; The Kansas City Southern Railway Company; and Little River Valley Railway Company*; complainant on June 11, 1907, shipped from Neal Springs, Ark., to San Francisco, Cal., one carload of oak lumber. As the shipment moved prior to June 28, 1907, for reasons given above the complaint will be dismissed.

In case No. 2272, *White Brothers v. Southern Pacific Company; Union Pacific Railroad Company; The Missouri Pacific Railway*

Company; and St. Louis, Iron Mountain & Southern Railway Company; complainant on September 25, 1907, shipped from Homan, Ark., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 56,100 pounds and the charges at 85 cents per 100 pounds amounted to \$476.85. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$56.10, with interest.

In case No. 2274, Allen & Higgins Lumber Company v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; and Morgan's Louisiana & Texas Railroad & Steamship Company; complainant on January 17, 1908, April 2, 1908, and April 13, 1908, respectively, shipped from New Orleans, La., to San Francisco, Cal., one carload of hard-wood lumber. The shipments weighed in the aggregate 144,500 pounds and the charges at 85 cents per 100 pounds amounted to \$1,228.25. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$144.50, with interest.

In case No. 2275, Allen & Higgins Lumber Company v. The Atchison, Topeka & Santa Fe Railway Company; The Missouri Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company; complainant on April 27, 1908, shipped from Helena, Ark., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 42,900 pounds and the charges at 85 cents per 100 pounds amounted to \$364.65. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from these defendants in the sum of \$42.90, with interest.

In case No. 2276, White Brothers v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas & Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company; complainant on September 2, 1907, September 25, 1907, and May 4, 1908, respectively, shipped from Portland, Ark., to San Francisco, Cal., one carload of oak lumber. The shipments weighed in the aggregate 154,470 pounds and the charges at 85 cents per 100 pounds amounted to \$1,313. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$154.47, with interest.

In case No. 2277, White Brothers v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; El

Paso & Northeastern Railway Company; El Paso & Rock Island Railway Company; The Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & El Paso Railway Company; and The Chicago, Rock Island & Pacific Railway Company, complainant shipped 10 carloads of oak lumber from De Vall's Bluff, Ark., to San Francisco, Cal., on the following dates, showing weight, aggregate charges, and amount of reparation claimed:

Date.	Weight.	Charges.	Reparation.
	<i>Pounds.</i>		
May 26, 1908.....	63,100	\$536.25	\$63.10
August 12, 1907.....	56,200	477.70	56.20
April 21, 1908.....	54,300	461.55	54.30
December 19, 1907.....	46,700	396.95	46.70
June 9, 1908.....	63,400	538.90	63.40
January 21, 1908.....	60,300	512.55	60.30
February 4, 1908.....	60,300	512.55	60.30
June 8, 1908.....	69,200	588.20	69.20
June 17, 1908.....	50,900	432.65	50.90
March 5, 1908.....	65,900	560.15	65.90

The aggregate weight of the shipments was 590,300, and the charges at 85 cents per 100 pounds amounted to \$5,017.55. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$590.30, with interest.

In case No. 2302, *White Brothers v. The Atchison, Topeka & Santa Fe Railway Company and St. Louis & San Francisco Railroad Company*, complainant made shipments of carloads of oak lumber from Jonesboro, Ark., to San Francisco, Cal., on the following dates, showing weight, aggregate charges, and amount of reparation claimed:

Date.	Weight.	Charges.	Reparation.
	<i>Pounds.</i>		
May 24, 1907.....	57,800	\$491.81	\$57.80
July 13, 1907.....	57,230	496.37	57.23
October 9, 1907.....	73,740	636.79	73.74
November 12, 1907.....	64,160	545.36	64.16

The first-named shipment was made prior to June 28, 1907, and for reasons above given will not be considered. The three shipments weighed in the aggregate 195,120 pounds, and the charges at 85 cents per 100 pounds amounted to \$1,658.52. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from these defendants in the sum of \$195.12, with interest.

In case No. 2303, *White Brothers v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas*

& Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company, complainant on October 31, 1907, shipped from Judsonia, Ark., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 63,500 pounds, and the charges at 85 cents per 100 pounds amounted to \$539.75. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation in the sum of \$63.50, with interest.

In case No. 2304, White Brothers *v.* Southern Pacific Company; Union Pacific Railroad Company; The Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Missouri & North Arkansas Railroad Company, complainant on October 5, 1907, shipped from Harrison, Ark., to Stockton, Cal., one carload of oak lumber. The shipment weighed 48,500 pounds, and the charges at 85 cents per 100 pounds amounted to \$412.25. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation in the sum of \$48.50, with interest.

In case No. 2305, White Brothers *v.* Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas & Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company, complainant on September 18, 1907, shipped from Walnut Ridge, Ark., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 41,600 pounds, and the charges at 85 cents per 100 pounds amounted to \$353.60. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from these defendants in the sum of \$41.60, with interest.

In case No. 2306, White Brothers *v.* Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas & Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company, complainant on September 11, 1907, shipped from New Augusta, Ark., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 81,200 pounds, and the charges at 85 cents per 100 pounds amounted to \$690.20. We are of opinion and find that the charges of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from these defendants in the sum of \$81.20, with interest.

In case No. 2307, White Brothers *v.* Southern Pacific Company; The Denver & Rio Grande Railroad Company; The Colorado Midland Railway Company; The Chicago, Rock Island & Pacific Rail-

way Company; St. Louis, Kansas City & Colorado Railroad Company; and Chicago & Eastern Illinois Railroad Company, complainant on October 15, 1907, shipped from Thebes, Ill., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 40,000 pounds, and the charges at 85 cents per 100 pounds amounted to \$340. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation in the sum of \$40, with interest.

In case No. 2308, the parties to which are hereinafter named, complainant shipped nine carloads of oak lumber from Shults, Ark., to San Francisco, Cal., on the following dates, showing weight, aggregate charges, and amount of reparation claimed:

Date.	Weight.	Charges.	Reparation claimed.
	<i>Pounds.</i>		
May 31, 1906.....	41,500	\$352.75	\$41.50
October 10, 1907.....	62,500	531.25	62.50
November 13, 1907.....	49,200	418.20	49.20
November 10, 1907.....	71,100	604.35	71.10
August 3, 1907.....	59,900	509.15	59.90
August 29, 1907.....	47,280	401.71	47.28
August 6, 1907.....	42,800	363.80	42.80
December 31, 1907.....	44,100	374.85	44.10
April 23, 1908.....	47,400	402.90	47.40

The aggregate weight of the shipments was 465,760 pounds, and the charges at 85 cents per 100 pounds amount to \$3,958.96. We are of the opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents, and that the complainant is entitled to reparation from the defendants in the sum of \$465.76, with interest.

In case No. 2309, White Brothers v. Southern Pacific Company; Union Pacific Railroad Company; The Missouri Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company, complainant made the following shipments from Homan, Ark., to San Francisco, Cal.:

Date.	Weight.	Charges.	Reparation.
	<i>Pounds.</i>		
January 22, 1908.....	56,800	\$482.80	\$56.80
October 12, 1907.....	52,900	449.65	52.90
October 4, 1907.....	56,800	482.80	56.80
January 20, 1908.....	49,600	421.60	49.60

The aggregate weight of the shipments was 216,100 pounds, and the charges at 85 cents per 100 pounds amounted to \$1,836.85. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100

pounds and that complainant is entitled to reparation from these defendants in the sum of \$216.10, with interest.

In case No. 2310, *White Brothers v. Southern Pacific Company*; *The Galveston, Harrisburg & San Antonio Railway Company*; *The Texas & Pacific Railway Company*; *The Denver & Rio Grande Railroad Company*; *The Missouri Pacific Railway Company*; and *St. Louis, Iron Mountain & Southern Railway Company*, complainant made the following shipments of oak lumber from Halley, Ark., to San Francisco, Cal.:

Date.	Weight.	Charges.	Reparation.
	<i>Pounds.</i>		
May 30, 1906.....	56,600	\$481.10	\$56.00
October 8, 1907.....	43,700	371.45	43.70
October 23, 1907.....	50,700	430.95	50.70

The aggregate weight of the shipment was 151,000 pounds, and the charges at 85 cents per 100 pounds amounted to \$1,283.50. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from these defendants in the sum of \$151, with interest.

In case No. 2312, *H. B. Maris v. Southern Pacific Company*; *The Galveston, Harrisburg & San Antonio Railway Company*; *The Texas & Pacific Railway Company*; and *St. Louis, Iron Mountain & Southern Railway Company*, complainant on May 23, 1908, shipped from Collinston, La., to Santa Clara, Cal., one carload of hard-wood lumber. The shipment weighed 50,300 pounds, and the charges at 85 cents per 100 pounds amounted to \$427.55. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$50.30, with interest.

In case No. 2319, *White Brothers v. Southern Pacific Company*; *The Galveston, Harrisburg & San Antonio Railway Company*; *El Paso & Northeastern Railway Company*; *El Paso & Rock Island Railway Company*; *Chicago, Rock Island & El Paso Railway Company*; *The Chicago, Rock Island & Gulf Railway Company*; and *The Chicago, Rock Island & Pacific Railway Company*, complainant on September 3, 1907, shipped from Jacksonport, Ark., to San Francisco, Cal., one carload of hard-wood lumber. The weight of the shipment was 64,000 pounds, and the charges at 85 cents per 100 pounds amounted to \$544. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$64, with interest.

In case No. 2320, *White Brothers v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas & Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company*, complainant on June 19, 1907, shipped from Smithton, Ark., to San Francisco, Cal., one carload of oak lumber. As this shipment moved prior to June 28, 1907, for reasons above given the complaint will be dismissed.

In case No. 2321, *White Brothers v. Southern Pacific Company; Union Pacific Railroad Company; and The Chicago, Rock Island & Pacific Railway Company*, complainant on June 30, 1908, shipped from Jacksonport, Ark., to San Francisco, Cal., two carloads of oak lumber. The shipments weighed in the aggregate 87,700 pounds, and the charges at 85 cents per 100 pounds amounted to \$745.45. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$87.70, with interest.

In case No. 2322, *White Brothers v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas & Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company*, complainant on July 16, 1907, shipped from Delaplaine, Ark., to San Francisco, Cal., one carload of oak lumber. The shipment weighed 56,300 pounds, and the charges, at 85 cents per 100 pounds, amounted to \$478.55. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds, and that complainant is entitled to reparation from these defendants in the sum of \$56.30, with interest.

In case No. 2323, *White Brothers v. Southern Pacific Company; The Galveston, Harrisburg & San Antonio Railway Company; The Texas & Pacific Railway Company; and St. Louis Iron Mountain & Southern Railway Company*, complainant on November 8, 1907, shipped from Halley, Ark., to Oakland, Cal., one carload of hardwood lumber. The shipment weighed 63,200 pounds and the charges at 85 cents per 100 pounds amounted to \$537.20. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$63.20, with interest.

In case No. 2334, *White Brothers v. The Atchison, Topeka & Santa Fe Railway Company; The Missouri Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company*, complainant on June 24, 1908, shipped from Portland, Ark., to San Francisco, Cal., one carload of oak lumber. This shipment weighed

44,120 pounds and the charges at 85 cents per 100 pounds amounted to \$375.02. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from these defendants in the sum of \$44.12, with interest.

In case No. 2335, *White Brothers v. The Atchison, Topeka & Santa Fe Railway Company and St. Louis & San Francisco Railroad Company*, complainant on January 22, 1908, shipped from Portia, Ark., to San Francisco, Cal., one carload of oak lumber. This shipment weighed 47,920 pounds and the charges at 85 cents per 100 pounds amounted to \$407.32. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from these defendants in the sum of \$47.92, with interest.

In case No. 2341, *White Brothers v. The Atchison, Topeka & Santa Fe Railway Company; The Missouri Pacific Railway Company, and St. Louis, Iron Mountain & Southern Railway Company*, complainant in November, 1907, shipped from Homan, Ark., to San Francisco, Cal., one carload of oak lumber. This shipment weighed 52,900 pounds and the charges at 85 cents per 100 pounds amounted to \$449.65. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$52.90, with interest.

In case No. 2342, *White Brothers v. The Atchison, Topeka & Santa Fe Railway Company; The Missouri Pacific Railway Company, and St. Louis, Iron Mountain & Southern Railway Company*, complainant on October 10, 1907, shipped from Halley, Ark., to San Francisco, Cal., one carload of hard-wood lumber. This shipment weighed 36,200 pounds and the charges at 85 cents per 100 pounds amounted to \$307.70. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$36.20, with interest.

In cases No. 2343, *White Brothers v. Atchison, Topeka & Santa Fe Railway Company, Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and Mississippi, Arkansas & Western Railway Company*; No. 2248, *Allen & Higgins Lumber Company v. Atchison, Topeka & Santa Fe Railway Company, St. Louis, Iron Mountain & Southern Railway Company, Missouri Pacific Railway Company, and Mississippi, Arkansas & Western Railway Company*; and No. 2308, *White Brothers v. Southern Pacific Company, Union Pacific Railroad Company, Colorado &*

Southern Railway Company, St. Louis, Iron Mountain & Southern Railway Company, Missouri Pacific Railway Company, and Mississippi, Arkansas & Western Railway Company, it is contended that the Mississippi, Arkansas & Western Railway Company is not shown to be a party to any tariff naming rates from Shults, Ark., to San Francisco, Cal., and that no order can therefore be properly made against that company. The Mississippi, Arkansas & Western Railway Company is a party to this proceeding, and has filed answer admitting that the shipments involved were made from Shults partly over its line. The through rate from Shults to San Francisco is unreasonable for the reasons that impel the finding from other Arkansas points. Whether the Mississippi, Arkansas & Western Railway Company is specifically named as a party to the tariff making through rates from Shults to San Francisco or not, it is clear the Commission is not ousted of jurisdiction to pass upon the question of the reasonableness of the through rate and to award reparation. Furthermore, during the time covered by most of the shipments the Mississippi, Arkansas & Western Railway Company is to be held a party to the tariff under Rule 68 of tariff circular effective September 1, 1909, and Rule 83 of the preceding circular. The movement of the traffic from Shults to San Francisco was a through movement, and the Mississippi, Arkansas & Western Railway Company is a proper party to this proceeding. The cases here presented with respect of the shipments are similar in all essential respects to the cases above considered.

In case No. 2343, parties to which are named above, the complainant on March 14, 1908, shipped from Shults, Ark., to San Francisco, Cal., two carloads of oak lumber. The shipments weighed in the aggregate 113,920 pounds, and the charges, at 85 cents per 100 pounds, amount to \$968.31. We are of the opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents, and that the complainant is entitled to reparation from the defendants in the sum of \$113.92, with interest.

In case No. 2345, *White Brothers v. The Atchison, Topeka & Santa Fe Railway Company* and *St. Louis & San Francisco Railroad Company*, complainant on March 2, 1908, shipped from Memphis, Tenn., to San Francisco, Cal., one carload of hard-wood lumber. This shipment weighed 48,060 pounds and the charges at 85 cents per 100 pounds amounted to \$408.51. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents per 100 pounds and that complainant is entitled to reparation from defendants in the sum of \$48.06, with interest.

Orders will be entered in conformity with the findings and conclusions stated.

No. 1913.

AWBREY & SEMPLE

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY
COMPANY ET AL.

Submitted May 20, 1909. Decided November 26, 1909.

Defendants collected on complainant's shipments of cement from Galveston, Tex., to Magdalena, Mexico, a so-called through rate of \$1 per 100 pounds, made up on a combination of 75 cents from Galveston to Guaymas, Mexico, plus a rate of 25 cents from Guaymas to Magdalena. It appeared that the 25-cent rate was the lawful rate established by the Mexican Government, but was not on file with the Commission. It also appeared that the rate from Galveston to Nogales, Ariz., an international point, was 62½ cents, and that the rate from Nogales to Magdalena was 6 cents, the latter rate having been lawfully established by the Mexican Government, making a combination of 68½ cents, but the rate from Nogales to Magdalena was not on file with the Commission; *Held*, That in the absence of the publication of a specific through rate from Galveston to Magdalena, the lawful rate applicable to these shipments was defendants' published rate of 62½ cents from Galveston to Nogales plus the lawful rate of 6 cents prescribed by the Mexican Government from Nogales to Magdalena. Reparation awarded.

John L. Dyer for complainant.

F. C. Dillard, P. F. Dunne, C. W. Durbrow, and W. F. Herrin for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainant, a copartnership, assails as unjust and unreasonable a rate of \$1 per 100 pounds on cement in carloads, minimum weight 40,000 pounds, from Galveston, Tex., to Magdalena, Sonora, Mexico, which was charged by defendants on 12 carload shipments, each loaded above the minimum, of the aggregate weight of 743,410 pounds, moving from said point of origin to said destination, between the dates of May 16 and June 25, 1907. The total charges on the shipments actually collected amounted to \$7,141.87, which sum, measured by the \$1 rate intended to have been charged, would indicate an undercharge of \$292.23. Complainant asks reparation from the defendants in the sum of \$2,681.41, or the difference between the charges

collected and what would have been charged had the defendants applied what complainant claims to be a just and reasonable rate.

Guaymas, Mexico, is located on the Gulf of California. The rail carriers reaching said point are the Sonora Railway Company (which line is leased and operated by the Southern Pacific Company) and the Cananea, Yaqui River & Pacific Railroad Company, the latter, in connection with the Mexican Central Railroad Company, making another route to said point through El Paso. It is not claimed, however, that this latter route has anything to do with the making of the rate to Guaymas. Magdalena is an intermediate point on the Sonora Railway between Nogales, Ariz., and Guaymas, Mexico, and shipments to Guaymas are carried through Magdalena. Nogales, Ariz., is at the international boundary line between the United States and Mexico, part of the town being in Arizona and part in Sonora, Mexico.

On the dates that the several shipments moved there was no through rate on cement on file with the Commission from Galveston to Magdalena. Trans-Continental Freight Bureau tariff, I. C. C. No. 375, filed December 21, 1903, effective January 18, 1904, and in force during the period in question, named a rate on cement in carloads, minimum weight 40,000 pounds, from Galveston to Los Angeles, Cal., of 75 cents per 100 pounds. Said tariff also provided that Los Angeles rates would apply to Guaymas, but would not apply to points intermediate to Guaymas; rates to Magdalena and points south on the Sonora Railway were to be made by adding the local rate Guaymas to Magdalena to the through rate to Guaymas. The local rates, however, from Guaymas to Magdalena are not on file with the Commission. It is manifest, therefore, that no tariff authority existed for the exaction of the alleged through rate of \$1 per 100 pounds on the shipments in question.

The terminal rate of 75 cents per 100 pounds on shipments of cement from Galveston applied for a long period of time to Los Angeles and Guaymas, but on November 3, 1906, by Supplement 39, and carried as a reissue in Supplement 65 to Trans-Continental Freight Bureau Westbound tariff, I. C. C. No. 375, a rate of 35 cents per 100 pounds was made applicable on shipments of cement from Galveston to Los Angeles, leaving the 75-cent rate in force to Guaymas.

The complainant contends that, inasmuch as Los Angeles and Guaymas were in the same group for a long time, and that the two points now take the same rate as to many other commodities, such as salt, hardware, agricultural implements, canned goods, and cereals, which move under the same tariff from Chicago and interior points, no reason now exists why an exception should be made as to cement, and therefore the 35-cent rate should also be made applicable to the latter point. Complainant predicates its claim for reparation on the basis of

the proposed application of the 35-cent rate to Guaymas plus the local of 25 cents from Guaymas to Magdalena, thus creating a through rate of 60 cents per 100 pounds. The tariff hereinbefore referred to also carries a rate of 35 cents per 100 pounds on cement from Iola, Kans., to Los Angeles.

The defendants justify the lower rate on cement from Galveston to Los Angeles than to Guaymas, on the ground that other competitive conditions prevail at Los Angeles that do not exist at Guaymas. When the San Pedro, Los Angeles & Salt Lake Railroad was built, it published a rate on cement from Salt Lake City and Devil's Slide, Utah, to Los Angeles, of 25 cents per 100 pounds. The Santa Fe published the 35-cent rate from Kansas City and other cement-producing points, including Iola, in order to protect its shippers, and this compelled the Southern Pacific to cut its rate from 75 cents to 35 cents from producing and distributing points on its line. There is a cement factory located at Colton, 58 miles from Los Angeles, and it is claimed that the carriers entering Los Angeles named the low rates referred to in order that their shippers might compete with the Colton factory. Defendants also contend that the ocean carriers operating from New York to the Pacific coast have fixed the measure of the rate on shipments of cement by rail from New York to Pacific coast terminals, and other points taking the same rates. It is stated that the Navierra Steamship Company operates in the Gulf of California, which, in connection with the American-Hawaiian Line, forms a through water route from New York to Guaymas.

The rate on cement in carloads from New York to Guaymas and Los Angeles was originally 50 cents per 100 pounds, which was afterwards reduced to 40 cents, all rail or rail and water, but it is stated that the rail lines have secured but little tonnage under that rate as against the water carriers. It is claimed, however, by defendants, that there is no water line between Galveston and Guaymas, and therefore the rail rate between said points could be made higher, as the rates produced by water competition are unreasonably low. If there is, in fact, no water competition in the transportation of cement between Galveston and Guaymas, it would seem that the 75-cent rate, at least at present, is free from competitive influences.

The rate from Napa Junction, Cal., through Benson and Nogales, to Guaymas, is 50 cents per 100 pounds. Complainant also used this rate by way of comparison. Napa Junction is located just south of San Francisco, and there is a steamer line operating between said point and Guaymas, and it appears that the defendant Southern Pacific established a 50-cent rate to meet the rate by sea. The 75-cent rate from Galveston to Guaymas has evidently been made without reference to the water rate from Napa Junction or Los Angeles to Guaymas. It is clear, however, that the conditions shown can justify a lower rate

from Galveston to Los Angeles than from Galveston to Guaymas, and from the record we are unable to find that the 35-cent rate should be applied between Galveston and Guaymas.

Defendant, the Southern Pacific Company, publishes a rate of 62½ cents per 100 pounds on cement from Galveston to Nogales, Ariz., in which the connecting carriers operating up to that point have concurred. The local rate from Nogales to Magdalena on the line of the Sonora Railway, which as before stated is leased and operated by the Southern Pacific Company, is 6 cents per 100 pounds. This local rate of 6 cents per 100 pounds, however, is not on file with the Commission. Defendants contend, however, that this combination should not be the measure of the through rate from Galveston to Magdalena. One reason advanced is that the 6-cent local mentioned is not published and filed with the Commission and that it is a purely local rate established by the Mexican Government. It appears from the record, however, that it was the rate fixed at the time the Sonora Railway Company accepted its concession from the Mexican Government, and no presumption attaches that it is unreasonably low. It is further claimed that the factor mentioned is not applicable because it applied to a part of the haul in Mexico. If the tariffs of the defendants had provided that the through rate to Magdalena should be made by using the rate to Nogales plus the local beyond, in the absence of the publication of the 6-cent local with the Commission, the resulting through rate so far as tariff publication is concerned would have been no more effective than defendants' attempt to publish a through rate based on Guaymas, plus the local from Guaymas to Magdalena, which latter factor has never been filed with the Commission. However, the 6-cent local could have been used for the transportation from Nogales to Magdalena wholly within the province of Sonora, Mexico. In accordance with the decision in *Gulf, Colorado & Santa Fe v. Texas*, 204 U. S., 403, the complainant, by billing its shipments to Nogales, paying the freight thereto, taking possession thereof, and reshipping to Magdalena, could have used this combination of rates aggregating 68½ cents.

The defendants make no showing that the local rate from Nogales to Magdalena was either low or unremunerative. In brief, however, they contend that the rate from Galveston to Nogales was produced by water competition from Galveston to Guaymas and the Mexican rail rate from Guaymas to Nogales. But the record shows that no water line operates from Galveston to Guaymas, and defendants lay particular stress upon that fact in showing that the rate from Galveston to Guaymas should not be made as low as the rate from Galveston to Los Angeles. The defendants have not been obliged to make the all-rail cement rate from Galveston to Guaymas lower than 75 cents per 100 pounds, and in view of the record we are unable to see that the water

rate, if any there be, from Galveston to Guaymas, has in any way influenced the making of the rail rate from Galveston to Nogales. No other competitive influence is claimed. If the rate to Nogales is produced by a combination on Los Angeles, it can not be held to be unreasonably low, and even though a given combination is brought about by competitive conditions inducing the establishment of the factors constituting the same, in the absence of facts to the contrary there would seem to be but little ground for claiming that a through rate should exceed that combination.

As before observed, the defendants collected on the shipments in question a rate of \$1 per 100 pounds, based on the terminal rate of 75 cents to Guaymas plus the rate from Guaymas to Magdalena, which was 25 cents per 100 pounds. The 25-cent rate was the lawful rate established by the Mexican Government on shipments of cement from Guaymas to Magdalena. As before stated, however, it was not on file with the Commission, and under the tariff provision of the carriers providing for the making of rates to Magdalena by using the terminal rate to Guaymas and adding the local rate from Guaymas to Magdalena, said carriers were using a combination, one factor of which was not on file. The rate from Galveston to Nogales was 62½ cents per 100 pounds and the rate from Nogales to Magdalena was 6 cents per 100 pounds, a rate lawfully established by the Mexican Government, making a combination amounting to 68½ cents, one factor of which was not on file with this Commission.

It seems clear that, even with the tariff authority for constructing rates on the basis of the Guaymas combination, the resulting rate would be unjust and unreasonable to the extent that it exceeded the Nogales combination. We have held that in instances where a through rate is constructed on a combination that each factor thereof must be published and filed with the Commission. This holding is predicated on the fact that without the filing of each factor there is no official measure of the rate. In application, however, it has referred largely to the rates of carriers not subject to the act, or rates wholly between points in a single state, of which the Commission could not take judicial notice, and there was nothing before the Commission in the shape of a record to show what the unpublished factors actually were. In this case, however, we have a published rate from Galveston to Nogales, filed in accordance with the law. From Nogales to Magdalena the rate is published in accordance with the law of the Republic of Mexico, and the proof that this rate is not only in existence, but that the same was established by the Mexican Government and is lawfully published and filed, is clearly shown by the record. With this record before us, we see no reason why this Commission can not take notice of this lawful rate established by another sovereign power applicable to shipments in its own domain.

In the absence of the publication of a specific through rate from Galveston to Magdalena it would seem that the lawful rate applicable to these shipments was defendants' published rate of 62½ cents per 100 pounds from Galveston to Nogales, and the lawful rate prescribed by the Mexican Government from Nogales to Magdalena, which was 6 cents per 100 pounds. We therefore find that complainant has been overcharged by the defendants, Galveston, Harrisburg & San Antonio Railway Company and the Southern Pacific Company, in the sum of the difference between \$7,141.87 collected and \$5,092.35, the amount which should have been collected on the basis of the rate of 62½ cents per 100 pounds applied from Galveston to Nogales plus the Mexican Government rate of 6 cents from Nogales to Magdalena. It is admitted that the shipments were made and that the total weight thereof was 743,410 pounds, and that the total charges exacted amounted to \$7,141.87, which were paid by complainant. Upon the basis of the weights and the amount paid the complainant is entitled to and will be awarded against the defendants, Galveston, Harrisburg & San Antonio Railway Company and Southern Pacific Company, the sum of \$2,049.52, with interest. Said defendants will also be required to establish and maintain for a period of not less than two years a rate not in excess of 62½ cents per 100 pounds on cement in carloads, minimum weight 40,000 pounds, from Galveston, Tex., to Nogales, when destined to Magdalena, Sonora, Mexico. An order will be entered in accordance with these views.

17 I. C. C. Rep.

No. 2501.
JAMES & ABBOT COMPANY
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted October 11, 1909. Decided December 6, 1909.

Rate on brick from Boston, Mass., to Lewiston, Me., not found to be unreasonable; but owing to misapplication of minimum, reparation awarded.

Arthur B. Paine for complainant.

Edgar J. Rich and *Matthew Hale* for defendants.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

Reparation in the sum of \$104.24 is claimed on a consignment of 215,800 pounds of brick shipped in six carloads from Mystic Wharf, Boston, Mass., to Lewiston, Me., 139 miles, via the Boston & Maine and Maine Central railroads, between July 11 and September 3, 1908; \$289.13 was the amount charged and collected, that being the sixth class rate of 12 cents per 100 pounds. The tariffs in effect at the time of the movement of these brick provided a minimum of 24,000 pounds, while the complaint alleges such minimum to have been 30,000 pounds and the charges were based on the latter minimum. Based upon the 24,000 minimum, there has been an overcharge of \$12.89, for which reparation will be awarded. Complainant claims that the rate should not exceed \$2 per 1,000 brick, or 4½ cents per 100 pounds from Boston to Portland, which it alleges was the rate charged by the Boston & Maine Railroad from Boston to Portland, plus a rate of 3.5 cents from Portland to Lewiston. Some of the cars contained less than the minimum, and the aggregate amount collected is therefore in excess of 12 cents per 100 pounds. The Official Classification, which governs over defendants' lines, provides for the movement of brick, "common, fire, and paving," minimum of 24,000 pounds at sixth class, which, between Boston and Lewiston, takes a rate of 12 cents. Brick are thus classified throughout the territory in which the Official Classification governs and a reduction in the rate between those points would necessitate by the carrier

either (1) the establishment of a commodity rate, (2) the placing of brick in a lower classification, or, (3) a reduction of the sixth class rate generally.

Common brick, in the vicinity of Boston, are valued at from \$6 to \$8 per 1,000, while the brick shipped by complainant are valued at from \$18 to \$24. Complainant has for fifteen years been manufacturing and shipping this same quality of brick in this territory and alleges it has always forwarded them as "common brick." The defendants deny that they were aware of this, and allege that if it has been done, the freight has been improperly billed and that the common-brick rate was intended to apply solely to what the trade knows as the common cheap brick, valued at \$6 or \$8 per 1,000. The carriers generally throughout the country, although placing brick in the sixth class, have almost universally made a commodity rate on common brick from various points of production. In this case, the Maine Central has published a 3.5-cent rate from Portland to Lewiston to meet the competition of brickyards 4 or 5 miles east of Lewiston. There is also a rate of \$1.80 per 1,000 from Portland to Boston on common brick. The Boston & Maine Railroad quoted to complainant, before the shipment moved, a rate of \$2 from Boston to Portland, but this was an error, as there was no such rate in effect.

Complainant claims that as the 12-cent rate charged is in excess of the quoted rate of \$2 per 1,000, or 4½ cents per 100 pounds from Boston to Portland, plus the 3.5-cent rate from Portland to Lewiston, that it is therefore unreasonable and the rate should not be higher than the sum of these two rates. In the first place, as stated, there is no \$2 rate between Boston and Portland and the 3.5-cent rate to Lewiston is applicable only on common brick. If this were a case of the shipment of common brick, it might be that in the absence of explanation the through rate should not be higher than the sum of locals. However, this is not a case of common brick. The complainant admits that these brick are valued at about three times that of common brick.

The Commission has had before it in several cases the question of rates on brick, notably in the *Stowe-Fuller case*, 12 I. C. C. Rep., 215, where the different kinds of brick were so similar that they could not be distinguished and should all be carried at the same rate. However, the Commission has never held that face brick, valued at from \$18 to \$24 and generally packed in straw, should be carried at the same rate as the ordinary, common brick, the rates on which must of necessity be made extremely low, in order to permit their movement at all. Common brick are made in almost every section of the country, and a rate made to move such a low-priced commodity as this should not

be taken as the basis for fixing the rate on the other classes of brick. In other words, common brick are in a class by themselves.

The rate per ton per mile earned on this brick was 17 mills, which is about 50 per cent greater than the average earnings on all classes of freight over defendants' lines. While this seems to be quite high, yet it is the regular sixth class rate applicable on all commodities coming under that class and is the rate applied on brick throughout the Official Classification Territory. There is no evidence before the Commission tending to show that the sixth class rate applied to brick is in itself unreasonable, or that there should be a general reduction of the brick rate by placing it in a lower class. Nor is there anything before the Commission to show that the 12-cent rate, applicable on sixth class between Boston and Lewiston, is in itself unreasonable. There is water competition by regular boat lines and by small craft between Boston and Portland, and this water competition, covering over 100 miles of the distance between Boston and Lewiston, which is about 139 miles, necessarily has a tendency to keep the class rates within reasonable bounds.

There is no large volume of traffic in brick moving between these points. The contention was that the shipments should have been hauled at rates made on common cheap brick. It is generally recognized that class rates on heavy commodities are made to move the more or less limited shipments from place to place, and commodity rates to move large, steady shipments.

An order will be entered awarding reparation in the sum of \$12.89, with interest.

No. 2554.

T. M. PARTRIDGE LUMBER COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted October 5, 1909. Decided November 26, 1909.

Present rates on fence posts and poles from Beaudette and Warroad, Minn., to certain points in North Dakota and South Dakota declared unreasonable, and reasonable rates prescribed for the future. Through routes established from Beaudette to such destination points.

James Manahan for complainant.

James D. Armstrong for Great Northern Railway Company.

Hector Baxter for Canadian Northern Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Large quantities of cedar are tributary to the Rainy River and the waters for which that river is an outlet. This cedar is not suitable for the production of lumber, but is mostly used for telegraph poles, telephone poles, and particularly fence posts, which find their market in the Dakotas. In the process of getting them to market, the posts and poles are floated down the Rainy River to Beaudette, Minn., which is the last station in the United States, and are there taken from the water and put upon the cars.

The Canadian Northern Railway extends from Beaudette to Warroad, Minn., a distance of 37 miles, where connection is made with a branch of the Great Northern running from Warroad to the main line of that company from Duluth to Grand Forks.

This branch of the Great Northern was opened for business in the fall of 1908, and on December 6 of that year a joint tariff of the Canadian Northern and the Great Northern became effective which named the same rate upon lumber, posts, and poles from Beaudette to the various stations in North and South Dakota involved in this complaint and hereafter mentioned. That rate to Grand Forks, N. Dak., which may be taken as illustrative, was 12½ cents.

In April, 1909, this tariff was canceled by a new joint tariff, which named the same rate upon lumber, but did not apply to posts and poles. In consequence of this poles and posts moved from Beaudette upon the combination of locals, which in case of Grand Forks were 4 cents from Beaudette to Warroad and 10½ cents from Warroad to Grand Forks, thus working an advance of 2 cents per 100 pounds upon posts and poles.

On June 30, 1909, the Great Northern Company established a new local tariff upon its line from Warroad to these various points, by which the rate on lumber was left substantially the same, while a material increase was made in the rate on posts. The post rate to Grand Forks was made 14 cents, while the lumber rate remained at 10½ cents. This worked a further increase in the rate on posts from Beaudette, which thereupon became and still is to Grand Forks 18 cents, as compared with 12½ cents upon lumber. Below is given a table showing the rates from Warroad to the various points named in the complaint upon lumber and posts previous to June 30, 1909, and upon those commodities since that date. The table also shows the rate on posts and on lumber from Beaudette.

Rate on posts and lumber, in cents per 100 pounds.

To—	From Warroad.			From Beaudette.	
	Rate on lumber and fence posts previous to June 30, 1909.	Rate on lumber since June 30, 1909.	Rate on posts since June 30, 1909.	Rate on lumber since June 30, 1909.	Rate on posts since June 30, 1909.
	Cents.	Cents.	Cents.	Cents.	Cents.
Grand Forks, N. Dak.....	10½	10½	14	12½	18
Grafton, N. Dak.....	12	12½	18	14	22
Fargo, N. Dak.....	13	13	15	15	19
Leeds, N. Dak.....	17	17	20½	19	24½
Minot, N. Dak.....	20	20	25	20½	29
Noonan, N. Dak.....	20	20	26	20½	30
Williston, N. Dak.....	26	28	33	30	37
Aberdeen, S. Dak.....	20	23	23	25	26
Watertown, S. Dak.....	22½	22½	22½	24½	24½
Huron, S. Dak.....	26	26	26	28	28

The complainant insists that the defendant should impose no higher rate upon posts and poles than it maintains upon lumber, and in support of this contention refers to the decisions of this Commission and to the universal practice of railroads.

It has been frequently held by this body that no higher rate should be applied to posts, poles, ties, etc., than is applied to manufactured lumber. It also appears that it is the general custom of railways, in this vicinity at least, to maintain no higher rates upon these articles than upon lumber. The Great Northern itself has upon its lines in the state of Minnesota maintained in the past, as a rule, rates upon

fence posts which are but 75 per cent of the lumber rate, and it was admitted in testimony that in no other locality upon its entire system were the post rates higher than the lumber rates. It is only in very unusual cases that higher rates should be applied to posts and poles than to lumber.

The rule that the transportation charge for posts and poles shall not exceed that applied to sawed lumber seems to grow out of the character of the commodities themselves. While the cost of movement is probably somewhat less in case of lumber, the value of the commodity is much less per carload with posts and poles, which are also more nearly in the nature of raw material. The standing timber from which posts and poles are obtained is not ordinarily capable of being used in the manufacture of lumber, so that there is no competitive reason, at least no strong competitive reason, why the rate upon these two commodities should be the same.

Bemidji and Deer River are upon the main line of the Great Northern between Duluth and Grand Forks, and both of these localities produce posts which come into competition with the posts from the Rainy River section in the Dakotas. It appears that lumber is also produced to some extent at Bemidji. Bemidji is 117 miles from Grand Forks, and the present rate upon lumber and posts is 11½ cents. Deer River is 171 miles from Grand Forks, and the present rate is 14 cents. The Great Northern insists that if we establish a rate of 12½ cents over these two lines of railroad for a distance of 196 miles, we could not decline to materially reduce the present rates from Bemidji and Deer River, thereby affecting all their lumber rates from this vicinity.

It appears that these Deer River rates were formerly established with the approval of the Minnesota commission, but that that commission has recently ordered certain reductions, how great did not appear, and that the lawfulness of the order reducing these rates is now in litigation and under injunction.

The Great Northern Railway justifies the rate of 12½ cents from Beaudette on lumber by stating that the lumber produced at this point comes into competition with that produced at Crookston and various other points not upon its line. It insists that the lumber rate from Beaudette is a competitive rate less than would otherwise be reasonable, and not therefore to be fairly taken as a standard of comparison by which to determine a reasonable rate upon posts. The Great Northern carries these posts to the consumer, whether they come from Rainy River or from the Deer River district, while it does not transport the lumber unless it is cut at Beaudette.

In this connection it may be noted, however, that 12½ cents per 100 pounds from Beaudette to Grand Forks, a distance of 196 miles,

yields a net revenue per ton mile of approximately 1.3 cents, and certainly can not be denominated a low rate for the handling of a commodity like fence posts.

The complainant asks that reasonable rates be established for the transportation of fence posts and poles from Warroad to the points named. Upon consideration of the whole situation we are of the opinion that the rates now in effect upon posts and poles from Warroad, Minn., to these points in North and South Dakota, as shown in the above table, are unreasonable, and that reasonable rates between these points would be the following, in cents per 100 pounds:

To—	Rate.	To—	Rate.
	<i>Cents.</i>		<i>Cents.</i>
Grand Forks, N. Dak	10½	Noonan, N. Dak	20
Grafton, N. Dak	12½	Williston, N. Dak	28
Fargo, N. Dak	13	Aberdeen, S. Dak	28
Leeds, N. Dak	17	Watertown, S. Dak	30½
Minot, N. Dak	20	Huron, S. Dak	26

The complainant further asks that a through route and joint rate be established from Beaudette, Minn., to these same points. At the present time this commodity moves upon the combination of locals, the local from Beaudette to Warroad being 4 cents per 100 pounds. There was at the date of the filing of this complaint no through route or joint rate between the points in question. We are of the opinion that one should be established by these defendants; that reasonable joint rates from Beaudette would exceed those from Warroad by 3 cents per 100 pounds, and that therefore the following rates in cents per 100 pounds would be just and reasonable rates to be charged for the future.

To—	Rate.	To—	Rate.
	<i>Cents.</i>		<i>Cents.</i>
Grand Forks, N. Dak	13½	Noonan, N. Dak	23
Grafton, N. Dak	15½	Williston, N. Dak	31
Fargo, N. Dak	16	Aberdeen, S. Dak	28
Leeds, N. Dak	20	Watertown, S. Dak	32½
Minot, N. Dak	23		

Some question was made as to the minimum carload, but we understand that the minimum now in effect is satisfactory and the above rates are established upon the understanding that the present minimum will be continued.

While the through rate from Beaudette has been constructed by adding 3 cents to the rate from Warroad, this must not be understood as a finding that the through rate should be divided on that basis.

An order will be issued in accordance with the above opinion.

17 I. C. C. Rep.

No. 2361.

MALES COMPANY

v.

LEHIGH & HUDSON RIVER RAILWAY COMPANY ET AL.

Submitted September 10, 1909. Decided December 6, 1909.

Complainant purchased a locomotive from the Lehigh Valley Railroad under a contract of sale which provided that locomotive should be delivered by vendor at Easton, Pa., free of transportation charges. Delivery was made at Easton to the Lehigh & Hudson River Railway accompanied by a card bill showing consignment to Lake View, N. J., and specific routing. The rate charged is alleged to be unreasonable and reparation is claimed; *Held*, That the Lehigh Valley Railroad Company did not participate in any transportation charges on this shipment, and in tendering it to the Lehigh & Hudson at Easton the Lehigh Valley acted as agent for the purchaser and not as a carrier. Shipment was therefore not misrouted by a carrier. The locomotive is in possession of complainant, but it appears that the transportation charges thereon have not been paid. From the facts presented rate charged not found to be unreasonable or unlawful. But if it were found to be unreasonable no order of reparation would be entered, because complainant has not paid the lawful charges on shipment. Complaint dismissed.

Wilmer, Canfield & Stone for complainant.

Herbert A. Taylor for New York, Susquehanna & Western Railroad Company.

John J. Bettie for Lehigh & Hudson River Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

This complaint arises out of the shipment of a locomotive and tender from Easton, Pa., a junction of the Lehigh Valley Railroad and the Lehigh & Hudson River Railway, to Lake View, N. J. The rate of 13 cents per 100 pounds is alleged to be unreasonable, and reparation in the sum of \$90.05 and the establishment of a reasonable rate for the future are prayed for.

Complainant purchased the locomotive from the Lehigh Valley Railroad under an agreement that it would be delivered to the purchaser at Easton, Pa., free from any transportation charges up to that

point. The Lehigh Valley Railroad delivered the locomotive to the Lehigh & Hudson River Railway at Easton with a card bill showing it consigned to Lake View, N. J., and routed via Sparta Junction and Hawthorne over the Lehigh & Hudson River; New York, Susquehanna & Western, and Erie railroads. Through error the locomotive was billed at 112,560 pounds weight. It should have been billed at 50 per cent of actual weight, or 56,280 pounds, and correction to that basis was issued October 30, 1908. The rate from Easton to Lake View via the route of shipment is 13 cents per 100 pounds. The charges would therefore be \$73.16. Complainant claims that a reasonable rate would be 10 cents per 100 pounds. On the basis of that rate and the corrected weight the reparation claimed would be \$16.88.

At the time of sale this locomotive was at South Easton, a station on the Lehigh Valley one mile south of Easton. A through joint rate of 10 cents per 100 pounds was in effect from South Easton to Lake View via Easton, Sparta Junction, and Hawthorne. No through joint rate was in effect from Easton via this route, the rate from Easton being made up of the combination of 10 cents to Hawthorne and 3 cents from Hawthorne to Lake View. There is a through joint rate of 10 cents from Easton to Lake View via Sparta Junction and Greycourt over the lines of the Lehigh & Hudson and the Erie.

If the locomotive had been delivered by the Lehigh Valley to the Lehigh & Hudson River without instructions as to routing, it would have been the duty of the Lehigh & Hudson to route it via Sparta Junction and Greycourt. The Lehigh Valley did not participate in the haul from Easton or in any transportation charges on this shipment. It delivered the shipment at Easton, the end of its line so far as this shipment is concerned, as provided in the contract of sale. It was not acting as a carrier in routing this shipment and can not, therefore, be held responsible as such for the misrouting. Aside from that, the Lehigh Valley is not a party to this case.

At the hearing the defendants suggested that they be permitted to change the bill of lading to read as though the locomotive had been shipped from South Easton, in which event the rate would be 10 cents and the cause of complaint be removed. We do not see how this may lawfully be done. This contract of sale was executed in apparent good faith. Because delivery at Easton resulted in a higher charge at destination than if delivery had been made at South Easton we do not see how it could be held that the locomotive was shipped from South Easton.

There is no evidence tending to show that 13 cents is an unreasonable rate over the route via Sparta Junction and Hawthorne. The Lehigh & Hudson makes a joint rate of 10 cents from Easton to

Lake View via Sparta Junction and Greycourt in conjunction with the Erie Railroad, while it does not make a joint through rate in connection with the New York, Susquehanna & Western and the Erie via Sparta Junction and Hawthorne. The Commission may not hold, based upon this fact solely, that the 13-cent rate to Lake View is unreasonable. That rate is a combination based upon Hawthorne, and to hold that a 10-cent rate should be made via that route because it is made via Greycourt would be to hold that if a through joint rate is effective via one route it must necessarily be made effective via another, which, of course, does not follow.

The tariffs show that from South Easton on the Lehigh Valley via Easton, Sparta Junction, and Hawthorne to Lake View there is a through joint rate of 10 cents, while the higher 13-cent rate prevails from Easton, an intermediate point on the same route. This issue was not raised in the pleadings or at the hearing, and therefore no decision can be made thereon. It would perhaps be difficult for the Lehigh & Hudson; the New York, Susquehanna & Western; and the Erie to justify participating with the Lehigh Valley in a joint rate of 10 cents from South Easton and charging 13 cents from Easton, of which 13-cent rate the Lehigh Valley gets no division. Unless unusual conditions warrant this adjustment it should be corrected at once.

The claim has been the subject of informal complaint before the Commission and there has been much correspondence relating thereto, from which, as well as from the pleadings, it appears that the freight charges have not been paid, although the locomotive is in possession of the complainant.

Not being able to find that the rate charged was unreasonable or unlawful, no reparation can be awarded. But even if the rate were found to be unreasonable an award of reparation would not be made, because complainant has not paid the lawful charges on the shipment.

An order of dismissal may be entered.

No. 1914.

CONNOLLY-FANNING COMPANY ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted May 29, 1909. Decided November 26, 1909.

Rates on barrel, or Malaga, grapes from seaboard points to Pittsburg, Pa., not having been shown to be unreasonable or unjust, the complaint is dismissed.

J. J. Foley for complainants.

Henry Wolf Bikle for Pennsylvania Railroad Company.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainants attack the rates on "barrel grapes" from New York, Philadelphia, Baltimore, and Washington, D. C., to Pittsburg, Pa., as unjust, unreasonable, and excessive; ask that certain rates much lower than those now in effect be established; and claim reparation on shipments made within the period of the statute of limitations. "Barrel grapes" are known to the trade as Almeria grapes and to the public generally as Malaga grapes. They are grown in Spain, transported by vessel to our eastern ports, and thence by rail to the various inland points of consumption. They are packed in cork dust in kegs or barrels, whence the name "barrel grapes," each barrel weighing about 60 pounds gross, containing 40 pounds of grapes. The port of New York fairly illustrates the situation at all the ports of entry with respect to this traffic, and is the port concerning which most of the testimony was produced. During the years 1907 and 1908 there were received at New York 1,369,000 barrels of Malaga grapes, at Boston 191,361 barrels, and at Philadelphia 85,200 barrels. In other words, Boston received only about 14 per cent and Philadelphia only a little over 6 per cent of the volume of this traffic received in New York. The rates, also, from the other ports are adjusted with relation to the rates from New York to interior destinations.

The movement of these grapes from the vineyards begins in September and October, and an examination of the records of shipments

17 L. C. Rep.

by rail indicates that while the great bulk of the traffic in this country moves in November and December, the carriers may expect to receive offers of barrel grapes at the ports at any time between September and March. At the port of New York the grapes are graded upon the wharf and sold at auction, the produce dealers buying so many barrels of one lot and so many barrels of another lot, the carrier assorting the lots so purchased, loading the cars, delivering the freight at destination lighterage free. In other words, the rate from the seaboard to Pittsburg applies from shipside within the free lighterage limits of New York Harbor.

Dealing in Malaga grapes is considered a somewhat speculative venture by the produce men themselves, because at the time movement commences in the autumn the market is fully supplied with Tokay grapes from California, and the two varieties are not ordinarily marketed at the same time. Tokay grapes have not the keeping qualities of the Malaga variety and usually sell at a lower retail price; Malaga grapes, therefore, are bought at the port, transported to the distributing points, such as Pittsburg, and there stored until the market conditions warrant their distribution to the retailer.

Official Classification No. 33, I. C. C., O. C. No. 33 classifies grapes in carloads, minimum weight 20,000 pounds, as second class and in less than carloads as first class freight; the same classification has a rule applicable to barrel grapes whereby a shipment of a carload and a part of a carload over shall be charged at actual weight and carload rate. It is to be noted that while the rates fixed by this classification apply on domestic as well as imported grapes the complaint is addressed solely to the rates on the imported variety.

The present rates, which have been in existence for more than six years past, are:

Rates on grapes, in cents per 100 pounds.

To Pittsburg from—	Carload.	Less than carload.
New York (including free freightage at New York Harbor).....	39	45
Philadelphia.....	33	39
Baltimore.....	31	37
Washington.....	31	37

Complainants ask for the establishment of rates on barrel grapes as follows:

Rates on grapes, in cents per 100 pounds.

To Pittsburg from—	Carload.	Less than carload.
New York.....	21	30
Philadelphia.....	19	28
Baltimore.....	18	27
Washington.....	18	27

While these proposed carload rates are the same as those now applicable to fresh vegetables, such as asparagus, lettuce, spring onions, green peas, green beans, cauliflower, green corn, celery, cucumbers, and pieplant, the proposed less-than-carload rates are much lower than the less-than-carload rates on the vegetables named. Grapes, however, are classified not with fresh vegetables, but with cherries, apricots, and plums. The complainants, however, seek to divide grapes into domestic grapes, concerning the rates on which they do not complain, and imported grapes, and to have the rates on the latter reduced to the carload rates, and to less than the less-than-carload rates, on fresh vegetables.

A great deal of testimony was produced with respect to the values of Malaga grapes and of the various vegetables referred to, the fair conclusion from which is that while the average values of some of the vegetables, such as asparagus, may at times exceed the average value of Malaga grapes, yet the average value of the latter exceeds the average value of all the vegetables named by about 33½ per cent. These grapes are subject to an ocean freight charge that has averaged 45 cents per barrel in the last two years. The carload rate, New York to Pittsburg, is equivalent to a barrel rate of 23.4 cents, or a total charge from vineyard to Pittsburg, excluding the duty, of 1.71 cents per pound. The rates on California Tokay grapes to Pittsburg all rail are 1.45 cents per pound.

The record makes it plain that Malaga grapes, while not requiring refrigeration, do require care in transportation to protect against low temperatures, and that the carriers generally provide refrigerator cars for their transportation, but without icing.

Upon all the facts in the case our conclusion is that the rates charged on barrel grapes from the seaboard to Pittsburg have not been shown to be unjust and excessive, and that, therefore, this complaint must be dismissed.

17 L. C. C. Rep.

No. 2704.
SOUTH CAÑON COAL COMPANY
v.
COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted November 1, 1909. Decided December 13, 1909.

Rate not unreasonable simply because a lower rate is in effect via lines of other carriers. Complaint dismissed.

C. W. Durbin for complainant.

E. E. Whitted and *R. H. Widdicomb* for Colorado & Southern Railway Company.

E. B. Peirce, *G. B. Albright* and *C. W. Waterman* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

On January 22, 1909, complainant corporation shipped one carload of coal from its Big Four mine in Colorado to Pueblo, Colo., via the Colorado & Southern Railway. On January 25 complainant ordered this car reconsigned to Hutchinson, Kans., via the Chicago, Rock Island & Pacific Railway. The rate of \$3.60 per ton collected was the combination of \$3 from the mine to Medora, Kans., plus 60 cents from Medora to Hutchinson. The distance from the mine to Hutchinson via this route is 749 miles.

The Colorado & Southern and the Denver & Rio Grande railways use the same track from the Big Four mine to Pueblo. There was in effect at the time this shipment moved a joint through rate of \$3 per ton from the mine to Hutchinson via the Denver & Rio Grande and the Chicago, Rock Island & Pacific. There was also in effect a rate of \$3 from the mine to Hutchinson via the Colorado & Southern and the Chicago, Rock Island & Pacific via Delhart, Tex., the distance over this route being 511 miles. Complainant sent this car to Pueblo, consigned to itself as a local shipment; and after securing an order from Hutchinson reconsigned it to that destination in accordance with the provisions of Colorado & Southern tariff.

The only relief asked for is reparation in the sum of \$19.25, being the difference between the rate assessed and the \$3 rate which petitioner claims should have been applied. The higher rate was directly due to the routing specified by complainant. There is no evidence that the rate via the route over which the shipment moved was unreasonable, further than the inference that may be drawn from the fact that the Denver & Rio Grande and Rock Island have a rate of \$3 from Big Four mine to Hutchinson. Such inference is not sufficient to warrant finding that the rate via the route the shipment moved was unreasonable.

The complaint is dismissed.

17 I. C. C. Rep.

No. 2355.

WHITE BROTHERS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL. AND NINE OTHER CASES DISPOSED OF IN THE
ORDER ENTERED HEREIN, WHICH CASES ARE INDICATED BY DOCKET NUMBERS AS FOLLOWS: 2356, 2357, 2358, 2359, 2360, 2364, 2366, 2367, AND 2368.

Submitted May 11, 1909. Decided November 26, 1909.

Complainants asked for reparation on the ground that defendants' through rates on hard-wood lumber in carloads from points east of the Mississippi River to San Francisco were unreasonable because more than combination of locals in effect; *Held*, That while the Commission has frequently declared that through rates between certain points should not exceed the combination of local rates between the same points, there is not sufficient evidence of record in these cases to warrant findings that the through rates charged were unreasonable. Reparation denied. *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668, distinguished.

Lester G. Burnett and J. O. Bracken for complainants.

T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard and C. W. Durbrow for Union Pacific Railroad Company; Southern Pacific Company; Galveston, Harrisburg & San Antonio Railway Company; and Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

It is alleged in these complaints that the charge of the published through rate of 85 cents per 100 pounds for the transportation of hard-wood lumber in carloads from points east of the Mississippi River to San Francisco, Cal., was unreasonable, for the reason that at the same time there was a combination of local rates between the same points that made less than 85 cents. Reparation is asked.

These complaints were all heard together and may be disposed of in a single report. In each the case of *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668, is referred to and the fact

17 I. C. C. Rep.

pointed out that the Commission found the reasonable rate for the transportation of lumber from Mississippi River points to San Francisco and other Pacific terminals should not exceed 75 cents per 100 pounds. Attention is also called to the fact that effective August 1, 1908, the carriers established the 75-cent rate from Mississippi River points to Pacific terminals. All the shipments involved in these cases were through shipments from points east of the Mississippi to San Francisco, for which the published through rate was charged by the carriers. Some of the shipments involved were made before the finding of the Commission in the *Burgess case*, and therefore before the rate therein found to be reasonable was put into effect by the defendants. In the *Burgess case* the Commission did not hold that the carriers might not charge from points east of the Mississippi River somewhat more than the rate of 75 cents therein prescribed for transportation from the river to the Pacific coast. No evidence was submitted and no finding was made with respect of the through rate to San Francisco from points east of the Mississippi River. While the Commission has frequently held that through rates between certain points should not exceed the combination of local rates between the same points, this is not a universal rule, especially in the case of common rates from points in each of the contiguous group territories. We do not have sufficient evidence before us in the records in these cases to warrant findings that the through rate charged was unreasonable. We would be forced to reach that conclusion merely because there was at the same time in the case of some of the shipments a lower possible combination of locals than the through rate. With respect of the shipments which were made prior to the finding in the *Burgess case* and prior to the time the carriers published the rate therein found to be reasonable, there was no combination of locals that was less than the through rate from the points in question; that is to say, the 85-cent rate appears to have been a blanket rate covering all the territory on the Mississippi and east thereof to the Pacific terminals. The Commission did not in the *Burgess case*, as above stated, have before it the question of the reasonableness of through rates from points east of the Mississippi, and that question is only presented in these cases with reference to possible combinations of locals which would make lower than the through rate because of the decision in the *Burgess case* and as the only basis for the claim for reparation here presented. No evidence is to be found in these records and none in the record in the *Burgess case* with respect to conditions of transportation from points east of the Mississippi.

Whether competition exists at Mississippi River points which would justify lower rates from those points than the combination

of local rates between points farther east and the Pacific coast we are not sufficiently advised to determine. In any event the through rates from the points involved in these cases have not been so brought in issue as to be determined in this proceeding. For these reasons we can not properly make a finding as to the reasonableness of the through rate from points east of the Mississippi River to San Francisco, and these claims for reparation will be dismissed.

No. 2189.

SANER-WHITEMAN LUMBER COMPANY

v.

TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.

Submitted June 12, 1909. Decided December 7, 1909.

Shipper in following routing instruction in the tariff sent five carloads of lumber via a route over which there was no rate applicable except the class rate. The tariff being in error, the carriers' duty was to treat the shipments as though unrouted and to forward them via the junction making the lowest combination of rates. Reparation awarded.

John C. Saner for complainant.

T. G. Beard for Texas & New Orleans Railroad Company and Houston & Texas Central Railroad Company.

Andrews, Ball & Streetman and *W. C. Preston* for St. Louis & San Francisco Railroad Company; St. Louis, San Francisco & Texas Railway Company; and Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In March, 1908, complainant shipped five carloads of lumber, aggregating 209,400 pounds, from Caro, Tex., to Memphis, Tenn., upon which total charges of \$858.54 were collected. The basis of these charges was the class rate of 41 cents per 100 pounds, no commodity rate having been provided by the route over which the shipments moved. This rate the defendants admitted was unreasonable.

17 I. C. C. Rep.

Caro is on the line of the Texas & New Orleans Railroad, 12 miles west of Nacogdoches. The cars were routed by the shipper "via Dallas, H. & T. C. R. R., Sherman, St. L. & S. F. R. R. and St. Louis," the routing specified in Texas & New Orleans Railroad tariff, I. C. C., No. 3, from mills north of Beaumont on the Texas & New Orleans Railroad. This tariff, attempting to group the various points of origin, applied the words, "To group 2" to "mills north of Beaumont." The same tariff, under the item showing points to which rates apply, shows "Memphis, Tenn., rate from Group 1, 16 cents, rate from Group 2, blank." Obviously, the carriers had no intention under this tariff to apply a rate to Memphis by the route named. The tariff failed, however, to apply any rates, whatever the intentions of the carriers may have been, by reason of the misapplication of the preposition "To" instead of "From" the groups 1 and 2. Even had the shipments moved "via New Orleans," in which case all mills on the Texas & New Orleans Railroad under the tariff were intended to take "Group 1" rates, the error noted would have rendered the application nugatory. This error in the use of the preposition in the grouping in the tariff was recognized by the issuing carrier and corrected in supplement No. 2, effective May 13, 1908, two months after the shipments moved. At the time the shipments moved the St. Louis, San Francisco & Texas Railway Company was not a party to the tariff and the route named therein was improper by reason of the lack of concurrence. In supplement No. 2 the latter carrier was named as a participating line and the routing from group 2 amended to read "via Dallas, H. & T. C. R. R., Sherman, St. L., S. F. & T. Ry., Red River, St. L. & S. F. Ry. and St. Louis," but no commodity rate has yet been applied to Memphis by this route. As corrected, the tariff now provides a rate to Memphis of 16 cents per 100 pounds from all mills on the Texas & New Orleans Railroad by way of New Orleans.

At the hearing the errors and imperfections of the tariff were fully developed and the parties by stipulation agreed, subject to the order of the Commission, that reparation should be had upon the basis of the lowest possible combination applicable to the shipments, which was and is 5 cents per 100 pounds from Caro to Nacogdoches and 15 cents thence to Memphis, which would have made a charge of \$418.80.

Upon all the facts of this case we find that the total charges collected were unreasonable and unjust in and to the extent that they exceeded a total of \$418.80, and that the complainant should have reparation in the sum of \$439.74, with interest.

No. 1979.

FOSTER LUMBER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 17, 1909. Decided November 26, 1909.

Reparation awarded against initial carrier for misrouting certain shipments of lumber transported from Fostoria, Tex., to Gary, Ind.

L. F. Bird for complainant.

Robert Dunlap and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

W. D. McKenzie for Chicago, Lake Shore & Eastern Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

In this proceeding complainant alleges that defendants exacted unreasonable rates for the transportation of 10 carloads of lumber during 1907 and 1908 from Fostoria, Tex., to Gary, Ind., and asks reparation in the sum of \$314.17, upon the theory that no rates in excess of 26 cents per 100 pounds should have been charged. The material facts may be briefly summarized as follows:

Fostoria is served only by the Gulf, Colorado & Santa Fe Railway. A number of lines reach Gary, but as a matter of convenience the consignee of the lumber desired terminal delivery by Michigan Central Railroad. During 1907 the only through joint rate for the carriage of lumber from Fostoria to Gary, 26 cents per 100 pounds, applied via the lines of the Santa Fe system from Fostoria to Joliet, Ill., and thence via the Chicago, Lake Shore & Eastern Railway to Gary. Being advised of this rate, complainant sold its lumber at a delivered price based thereon, and having in mind the instructions of the consignee as to terminal delivery, routed the first three shipments via the Santa Fe lines and the Chicago, Lake Shore & Eastern, "c/o Michigan Central." When these shipments were made the city of Gary was in process of construction and the railroads had not been able to construct at that point certain switch connections which have since been perfected. Complainant assumed that after

arrival at Gary the lumber could be switched to the tracks of the Michigan Central Railroad; but this could not be accomplished, because there was no physical connection at Gary between the Chicago, Lake Shore & Eastern and the Michigan Central, the tracks of the former being north and those of the latter some distance south of the Grand Calumet River. Therefore, in order to accomplish the delivery noted on the bill of lading, after arriving at Gary on the tracks of the Chicago, Lake Shore & Eastern the shipments were hauled back by that line to Hammond, the nearest point at which it had physical connection with the Michigan Central, and thence returned to Gary by the Michigan Central. This back haul from Gary to Hammond and return involved additional local charges, above the 26-cent rate, of 6 and 6.8 cents per 100 pounds, and it is for those charges that complainant claims reparation.

During 1907 complainant could have secured delivery on the Michigan Central tracks at a rate of 30 cents per 100 pounds by routing the shipments from Fostoria to Joliet under a 26-cent rate, and thence via the Michigan Central to Gary at a rate of 4 cents, or the shipments could have been routed to Hammond, thence via the Michigan Central to Gary, at a total charge of 32 cents per 100 pounds; and either routing would have avoided the back haul to Hammond and return.

Three of the eight cars shipped in 1907 were directed by complainant to be routed via the Santa Fe lines and Chicago, Lake Shore & Eastern, for delivery on the Michigan Central tracks. The remaining five cars which moved in 1907 were routed by complainant in a similar manner, but rerouting instructions were subsequently transmitted to the initial carrier which are susceptible of interpretation as directing carriage of the cars to Hammond, and thence via Michigan Central, which could have been accomplished at a rate of 32 cents per 100 pounds. The two carloads shipped in October, 1908, were not routed by complainant, and were carried by defendants over routes which resulted in the application of a 30-cent rate in one case and a 32-cent rate in the other.

During 1907 and 1908 the Santa Fe system made earnest efforts to secure joint rates to Gary, and the establishment of such rates was retarded only to the extent incidental to the construction of track connections in and about Gary, collection of information respecting the territory from which rates were necessary, and elimination of disputes concerning the division of the through rates with its connections. The joint rate with the Chicago, Lake Shore & Eastern was published in the spring of 1907. A joint rate of 26 cents from Fostoria to Gary, in connection with the Michigan Central, was made effective December 22, 1908. A representative of the Santa

Fe testified that publication of this rate was delayed by failure of the connecting lines to agree upon mutually satisfactory divisions.

The Commission has held that, in the absence of specific through routing by the shipper, it is the duty of the carrier to route shipments by the cheapest reasonable route over which lawfully established rates are in force. *Pankey v. R. & D. R. Co.*, 3 I. C. C. Rep., 658; *Dewey Brothers Co. v. B. & O. R. R. Co.*, 11 I. C. C. Rep., 481; *Hennepin Paper Co. v. N. P. Ry. Co.*, 12 I. C. C. Rep., 535. Where a shipper gives instructions to forward his goods by a particular route the carrier is relieved of the duty of ascertaining whether the goods could be forwarded by another route at a lower rate. *A. J. Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C. Rep., 469. And carriers may not disregard the instructions of shippers as to intermediate routing, except when tariff of initial line reserves the right to dictate intermediate routing, Tariff Circular No. 17-A. Applying these rules to the shipments in question, we find that complainant is not entitled to reparation upon the first three shipments in 1907, because the expense incurred above the 26-cent rate was caused by compliance with complainant's routing instructions. Neither can we find that complainant is entitled to reparation down to 26 cents per 100 pounds upon the other five carloads shipped in 1907; but we do find that it should be allowed reparation down to 32 cents upon those shipments, because, under complainant's subsequent instructions as to routing, they might have been carried at that rate. As to the two carloads shipped in 1908, we find complainant entitled to reparation in the amount collected above 26 cents per 100 pounds for the reason that, no routing instructions having been issued by complainant, it was defendants' duty to carry the freight to Gary at the lowest available rate, which was 26 cents per 100 pounds. Upon the five cars shipped in 1907, which contained an aggregate weight of 236,540 pounds, total freight charges of \$775.25 were collected. We find that in respect of those cars a total of \$756.93 should have been assessed had the cheapest available route compatible with complainant's instructions been followed, and that, therefore, complainant is entitled to reparation in the sum of \$18.32. Upon the two carloads shipped in 1908, which contained an aggregate weight of 103,300 pounds, total freight charges of \$321.32 were collected. For reasons stated above, we find that the shipments should have been carried at a 26-cent rate, and that complainant is entitled to reparation in the amount represented by the difference between that rate and the rates actually collected, or \$52.74. Upon consideration of all the facts in this case, our conclusion is that complainant is entitled to reparation in the sum of \$71.06, with interest, and an order will be issued requiring the initial carrier to make reparation in that amount.

No. 2217.

STOCK YARDS COTTON & LINSEED MEAL COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

Submitted May 25, 1909. Decided December 7, 1909.

A carrier voluntarily establishing a through rate less than the sum of the locals after a shipment has moved does not, *ipso facto*, become liable for the difference between the amount charged and the amount which would have been collected if the through rate had been in effect at the time of the movement.

Fred L. Cook for complainant.

J. C. Finch for Missouri, Kansas & Texas Railway Company.

R. W. Blair and *H. G. Kaill* for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

On October 30, 1907, complainant shipped from Bartlett, Tex., to Winchester, Kans., a carload of cotton-seed cake weighing 40,200 pounds upon which was charged and collected the sum of \$126.62 based upon a rate of 31 cents per 100 pounds and a switching charge of \$2 at Kansas City, Mo. The rate charged was made up of the combination of locals based upon Kansas City, 25 cents to Kansas City and 6 cents beyond.

Complainant also shipped from Bartlett, Tex., to Onaga, Kans., on April 6, 1908, a carload of cotton-seed cake weighing 50,000 pounds upon which was charged and collected the sum of \$166.25 based upon a rate of 33½ cents per 100 pounds. This rate was likewise made up of the combination of locals based upon Kansas City, 25 cents to Kansas City, and 8½ cents beyond.

The Missouri, Kansas & Texas Railroad transported both of these shipments from point of origin to Kansas City and the Leavenworth, Kansas & Western Railroad from that point to the above destinations. Complainant alleges that a reasonable charge for these

shipments would have been 25 cents per 100 pounds upon the Winchester shipment and 29 cents on the Onaga shipment, and asks reparation in the amount of \$47.37. The claim for reparation was presented informally to the Commission on June 6, 1908.

Since the shipments moved the Leavenworth, Kansas & Western Railway Company has been absorbed by the Union Pacific Railway Company, and the latter company was made a party defendant. But before this absorption the Leavenworth, Kansas & Western became a party to a tariff naming a through rate of 25 cents on the commodity in question from Bartlett to Winchester and 29 cents from Bartlett to Onaga. These rates became effective June 8, 1908, and are still in force via the Missouri, Kansas & Texas and the Union Pacific.

The question presented is whether or not a carrier which voluntarily establishes a through rate less than the sum of the locals after a shipment has moved should *ipso facto* become liable for the difference between the amount charged and the amount which would have been collected if the through rate had been in effect at the time of the movement. We have said many times that the voluntary reduction of a rate by a carrier with no other evidence of its unreasonableness except the fact that a lower rate is at present in existence does not present a case where reparation should be awarded.

At the hearing complainant seemed to consider that the assessing of a \$2 switching charge upon the Winchester shipment did not have tariff authority. With this we are unable to agree, as it was apparently assessed under supplement 5 of Trans-Missouri Freight Bureau tariff, I. C. C. No. 193, effective August 8, 1907, which provides for an intermediate switching charge of \$2 per car on shipments from the Missouri, Kansas & Texas Railroad to connecting lines at Kansas City. We are also of the opinion that this switching charge should have been assessed upon the Onaga shipment as well as upon the shipment to Winchester. The complaint is dismissed.

No. 2705.

WILLIAM F. JOBBINS, INCORPORATED,
v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted August 20, 1909. Decided November 26, 1909.

The tariff of defendants in force when shipment involved was made held to be unreasonable and unlawful in that it did not contain a rule providing that when carriers are unable to furnish a car of large dimensions ordered by shipper, they may furnish two smaller cars, which may be used on the basis of the minimum fixed for the car ordered. Provision to that effect subsequently published required to be maintained for two years, and reparation awarded.

Thomas M. Starkie for complainant.

Samuel A. Lynde and *Edward M. Hyzer* for Chicago & North Western Railway Company.

F. C. Dillard, *P. F. Dunne*, and *C. W. Durbrow* for Southern Pacific Company and Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This case is submitted on complaint and answers. In December, 1906, complainant, desiring to ship a carload of persulphate of iron from Aurora, Ill., to San Francisco, Cal., requested the initial carrier, the Chicago & North Western Railway Company, to provide a car of 60,000 pounds capacity for the proposed shipment. The rate applicable on the shipment in question, 60 cents per 100 pounds upon a minimum carload weight of 60,000 pounds, was published in Transcontinental Freight Bureau tariff, I. C. C. No. 375, effective January 18, 1904, which also contained the following rule applicable to the excess over carload lots:

8. *Excess or less than carloads.*—When the minimum carload weight or more of one article is shipped in one day by one consignor to one consignee, covered by one bill of lading, the established rate for a carload shall apply on the entire lot, although it may be less than two or more full carload lots. The first car or cars must be loaded to their full capacity, and are subject to established rules for minimum weights, the actual weight of the remainder, provided it is loaded in box cars, to be charged for at the carload rate, reference being made on the waybill for the remainder

of the lot to the waybill for the full carload or loads. This is intended to apply on all articles that are classified in class or commodity rates in both less than carloads and in carloads, except on carload freight taking minimum weights of less than 24,000 pounds, and shipments of agricultural implements (including hand implements), vehicles, live stock, green fruit, green vegetables, stoves and ranges, stovepipe and stovepipe elbows, barrels, casks, emigrants' movables, furniture, household goods, kegs, lumber, articles taking lumber rates, sash, doors, blinds, tin cans, tinware, stamped ware, wagon material, woodenware, baskets, and all shipments requiring special equipment, such as refrigerator, ventilator, or other: in such cases excess lots will be charged for at the less-than-carload rate.

At the time the shipment was offered the Chicago & North Western was unable to furnish a car of 60,000 pounds capacity, and in lieu thereof furnished two cars, each of 40,000 pounds capacity, into one of which complainant loaded 44,013 pounds and into the other 15,696 pounds, or 59,709 in all. Upon this shipment complainant prepaid freight charges at the rate of 60 cents per 100 pounds, amounting to \$360, upon the prescribed minimum carload weight of 60,000 pounds. In explanation of the acceptance of this amount in prepayment of freight charges, it is stated that the local agent of the initial line misconstrued the rule above quoted to mean that when a carrier, being unable to furnish a car capable of carrying the minimum weight prescribed by the tariff, furnished two smaller cars in lieu thereof, the shipment would be carried in the two smaller cars at the total charge which would have been incurred had the carrier furnished a car capable of carrying the minimum weight prescribed by the tariff. Obviously, however, the rule in question provided that the minimum weight prescribed by the tariff must be applied upon the first car; and in accordance with this provision, when the shipment reached San Francisco, the Southern Pacific Company demanded payment of additional charges on basis of the tariff minimum for the two cars and rendered bills accordingly. This made an additional charge of \$95.92, which was paid under protest by complainant's representative at San Francisco.

It appears that at the time this shipment moved there was no rule in the tariff providing that in case of inability of the initial carrier to furnish a car of capacity sufficient to contain the minimum weight prescribed by the tariff, two smaller cars could be furnished in lieu thereof, to be used on the basis of the minimum fixed for the car ordered. Effective February 1, 1909, by supplement No. 1 to Transcontinental Freight Bureau tariff, I. C. C. No. 865, such a rule was provided, reading as follows:

(E) When carrier is unable to furnish a car of large dimensions ordered by shipper, two smaller cars may be furnished, and may be used on the basis of the minimum fixed for car ordered, it being understood that shipper may not order a car of dimensions or capacity not provided for in this tariff.

The facts in this case appear to bring it clearly within the principle announced in *Kaye & Carter Lumber Co. v. Minnesota & International Ry. Co.*, 16 I. C. C. Rep., 285, in the following language:

A carload rate and a minimum weight for a car of definite dimensions when lawfully published in the tariffs of a carrier constitute an open offer to the shipping public to move their merchandise on those terms; and it would be wholly unsound in principle to permit the carrier to impose additional transportation charges on the shipper who orders a car of a capacity, length, or dimension specified in its tariffs, simply because it is not provided with cars of the dimensions ordered. *Pacific Purchasing Co. v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 549, and *General Chemical Co. v. N. & W. Ry. Co.*, 15 I. C. C. Rep., 349. We therefore find that the complainant is entitled to reparation.

The obligation to carry the merchandise of shippers on the basis of the published rates and minimum weights, and to use whatever cars are available for that purpose, ought to have been covered in the published tariffs of the defendants by proper rule to that effect; and their tariffs were unreasonable and unlawful in not containing such a provision at the time these shipments were made. *Beggs v. Wabash R. R. Co.*, 16 I. C. C. Rep., 208.

We find that defendants' tariffs were unreasonable and unlawful by reason of their failure to contain a rule similar to that above quoted from Transcontinental Freight Bureau tariff, I. C. C. No. 865, and that by reason of such failure the sum of \$95.92 was unlawfully exacted from complainant. An order will be entered awarding complainant reparation in that amount with interest, and requiring the maintenance of the rule in question for a period of not less than two years from the date of the order.

17 I. C. C. Rep.

No. 2192.

SOUTHERN BITULITHIC COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted May 10, 1909. Decided December 14, 1909.

Complaint alleged that defendants' rate on crushed stone from Cedar Bluff, Ky., to Baton Rouge, La., was unreasonable and unjustly discriminatory, but upon the particular facts of the case the allegations are not sustained and the complaint should be dismissed.

W. B. Campbell Pilcher for complainant.

Sidney F. Andrews for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

In this proceeding it is alleged that the rate of \$1.85 per gross ton exacted by defendants for the transportation of 1,511.8 tons of crushed stone from Cedar Bluff, Ky., to Baton Rouge, La., shipped by complainant during April and May, 1906, was unreasonable and unjustly discriminatory. Reparation is asked in the sum of 35 cents per ton upon the shipments in question. The limitation of two years upon the filing of claims with the Commission is pleaded in bar of the action; but we find that although this formal complaint was not filed until May 2, 1909, the claim was filed informally within the statutory period. Under previous rulings of the Commission the claim is not, therefore, barred by the statute of limitations.

The rate in question, amounting to only 2.84 mills per ton (2,000 pounds) per mile via the short-line distance, does not appear to be excessive. On the contrary, it is no doubt rather low. And we find nothing in the record to support complainant's contention that the rate is unreasonable in itself. The real gravamen of the complaint, however, is that the rate is unduly discriminatory, and this allegation is based mainly upon comparison of the \$1.85 rate from Cedar Bluff to Baton Rouge with defendants' rate of \$1.50 for carriage of the same commodity from Cedar Bluff to New Orleans. It appears from the evidence that the \$1.50 rate to New Orleans was

established to permit sale of stone from Cedar Bluff at that point in competition with stone quarried in Alabama. The short-line distance from Cedar Bluff to Baton Rouge is 580 miles and to New Orleans 599 miles. The distance from Birmingham, Ala., to New Orleans is 355 miles, and the rate \$1.40. From the record it seems clear that comparatively low rates were established by defendants from Cedar Bluff to New Orleans and Baton Rouge to enable stone quarried at the former point to be sold at those destinations. It does not appear that there is such a competitive relation between Baton Rouge and New Orleans in respect of the commodity in question that different rates to those points are *prima facie* unlawful. On the contrary we find that there is such substantial dissimilarity between the conditions existing in respect of the transportation of crushed stone from Cedar Bluff to those two cities as to justify the difference in rate of which complaint is made. It follows that the complaint should be dismissed, and it will be so ordered.

It should be noted that our conclusion is based only upon evidence adduced in relation to the particular traffic and points mentioned in the complaint. Defendants state that in many cases New Orleans and Baton Rouge receive the same rates, and nothing contained in this report is to be construed as warranting any change in rate adjustment as between those two cities respecting traffic which was not the subject of investigation in this proceeding.

No. 1433.

CRUTCHFIELD & WOOLFOLK

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted May 29, 1909. Decided December 14, 1909.

Rate charged for the transportation of six carloads of grapes from Peewee Valley, Ky., to Pittsburg, Pa., found unreasonable.

J. J. Foley for complainants.

William A. Northcutt for Louisville & Nashville Railroad Company.

C. B. Fernald for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainants challenge the legality of the rate assessed on six carloads of grapes shipped via the defendants' lines from Peewee Valley, Ky., to Pittsburg, Pa. The case has been heard twice. We were unable, for want of proper parties defendant, to make an order following the initial hearing. 14 I. C. C. Rep. 558. Complainants' petition was subsequently amended in conformity with the Commission's suggestion, and a second hearing held. For the purposes of this report a detailed statement of the facts will not be necessary.

Peewee Valley is situated some 17 miles east of Louisville on the Cincinnati line of the Louisville & Nashville Railroad. The shipments in question moved in August and September, 1907, and charges appear to have been collected at the rate of 45 cents per 100 pounds. Defendants admit that there was no tariff authority for the rate charged, but represent that the rate properly assessable was 42 cents per 100 pounds made up of the local rate of 12 cents per 100 pounds from Peewee Valley to Louisville plus a proportional rate of 30 cents per 100 pounds applying from Louisville to Pittsburg. There being no joint rate from point of origin to destination, it would seem that

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the 42-cent combination as claimed was properly applicable under paragraph 5 (b) of Tariff Circular 17-A, reading as follows:

If shipment moves to or from a point *directly intermediate to the base point upon which the lowest combination makes*, such combination must be applied; and it is not necessary to haul shipment to such base point and back again to or through point of origin or destination.

The flat rate in effect on grapes, in carloads, moving from Louisville to Pittsburg is 39 cents per 100 pounds. Complainants contend that the rate charged on these shipments was unjust and unreasonable to the extent that it exceeded 30 cents per 100 pounds, the proportional at present applying from Louisville on shipments originating beyond. However, this 30-cent proportional is in large measure forced upon the defendants by competitive conditions, and upon this record we are not justified in fixing the rate from Peewee Valley to Pittsburg at that figure.

Upon the facts presented we find that the rate charged by these defendants was unjust and unreasonable to the extent that it exceeded a rate of 39 cents per 100 pounds. We find, further, that a reasonable rate to be observed for the future on grapes, in carloads, from Peewee Valley, Ky., to Pittsburg, Pa., should not exceed 39 cents per 100 pounds. Reparation will be awarded upon presentation of competent evidence of the payment of freight charges.

17 I. C. C. Rep.

No. 2851.

H. R. WILLIAR

v.

CANADIAN NORTHERN QUEBEC RAILWAY COMPANY
ET AL.

Submitted October 22, 1909. Decided December 14, 1909.

Reparation awarded for the collection of unreasonable charges upon 18 carloads of newspaper shipped from Grand Mere, Quebec, to San Francisco, Cal., and rate prescribed for the future.

J. O. Bracken for complainant.

C. W. Durbrow for Southern Pacific Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

On various dates in July, August, and September, 1907, complainant caused to be delivered to the Canadian Northern Quebec Railway Company, at Grand Mere, Quebec, some 18 carloads of newspaper for transportation to San Francisco, Cal. With one exception the shipments were routed by the shipper via the Canadian Pacific Railway Company, Wabash Railroad Company, Chicago, Burlington & Quincy Railroad Company and lines beyond; the remaining carload was routed via the Canadian Pacific Railway Company, Wabash Railroad Company, Chicago & North Western Railway Company and lines beyond. At the time of movement there was in effect a rate of 75 cents per 100 pounds on newspaper, in carloads, from Grand Mere to San Francisco, but this rate was effective only through Chicago. The Wabash Railroad Company carried these shipments from Detroit via its East Hannibal gateway, and, with the exception of a single carload, delivered same to the Chicago, Burlington & Quincy Railroad Company at Kansas City; the remaining carload was delivered to the Missouri Pacific Railway Company at Kansas City. Thence shipments were carried to destination via the lines of the several other defendants.

The rate lawfully applicable by the route of movement was 90 cents per 100 pounds, and charges were collected in accordance therewith. This rate is alleged by the complainant to be unjust and unreasonable, to the extent that it exceeds the rate of 75 cents per 100 pounds applying through the Chicago gateway. Reparation is sought in the amount of \$1,891.93.

Effective January 28, 1908, the 75-cent rate was made specifically applicable via all routes. The through rate appears to have been canceled on January 1, 1909, but was reestablished on June 5, 1909.

Certain of the defendant carriers disclaim liability for the collection of the alleged excessive charges upon the plea that it was the duty of the initial carrier, or of the Wabash Railroad Company to which the shipments were intrusted at Detroit, to forward the same via the Chicago gateway, and that the connecting lines should bear no part of the responsibility for the shipments having been sent by the more expensive route. We may observe that carriers charged with exacting an unreasonable rate can not escape liability solely upon the ground that the shipments could have been transported via a route carrying a lower rate. If the rate assessed was, in fact, unreasonable, defendants should be required to make reparation irrespective of the fact that the shipper would have enjoyed a lower rate if his shipments had moved through a different gateway.

We find that the rate assessed and collected on the shipments giving rise to this complaint was unjust and unreasonable to the extent that it exceeded the rate of 75 cents per 100 pounds which was applicable via the Chicago gateway and has since been made effective via the route of movement. We find further that a reasonable rate to be observed for the future should not exceed 75 cents per 100 pounds. Reparation will be awarded in the amount of \$1,891.93 as claimed, with interest from the date of payment of freight charges.

An order will issue in conformity with these findings.

No. 2238.

MILL CREEK CANNEL COAL COMPANY
v.
COAL & COKE RAILWAY COMPANY ET AL.

Submitted October 4, 1909. Decided December 14, 1909.

Complaint challenging reasonableness of rates on cannel coal from Mill Creek-Elk, W. Va., to points in Ohio, Illinois, Michigan, and other states, dismissed on motion of complainant.

E. B. Dyer for complainant.

George E. Price and *Buckner Clay* for Coal & Coke Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complainant challenges the legality of rates assessed by the defendants for the transportation of cannel coal from Mill Creek-Elk, W. Va., to various points in Ohio, Illinois, Michigan, and other states.

It appears that for some years past the rate effective on cannel coal from mines in West Virginia to various points in other states reached by the lines of the defendants and their connections has been fixed at the rate applying on bituminous coal, plus an arbitrary of 25 cents per ton. It is alleged that this adjustment subjects complainant to unjust and unreasonable charges and violates the law's prohibitions against discrimination.

At the hearing complainant moved that the petition be dismissed, representing that the real cause leading to the complaint was the announcement of the defendant, the Kanawha & Michigan Railway Company, that shipments of cannel coal would henceforth be assessed the regular sixth class rate. On behalf of the defendants, it is explained that the Kanawha & Michigan Railway Company discovered that many shipments were being made to points to which commodity rates were not specifically applicable under the established tariffs;

it was, therefore, necessary to require the assessment of charges upon such shipments in accordance with the sixth class rate, an admittedly prohibitive charge. Subsequent to the filing of complaint, defendants' tariff was amended by inserting an intermediate clause, making the commodity rates applicable to the points which formerly had not been covered. In addition to this, the rates on cannel coal were reduced by some 10 or 15 cents per ton from the former figure. It thus appears that the difficulties giving rise to this petition have been removed to the satisfaction of the complainant.

Inasmuch as the ends sought by the complainant in this proceeding have been substantially attained, an order of dismissal will be entered.

No. 2568.

JOHN W. VANNESS

v.

LEHIGH & HUDSON RIVER RAILWAY COMPANY ET AL.

Submitted September 24, 1909. Decided December 13, 1909.

Rate of 42 cents on horses, in carloads, from Chambersburg, Pa., to Warwick, N. Y., held to be unreasonable, and 33 cents fixed as the maximum to be charged in the future. Reparation awarded.

John W. Vanness for complainant in person.

Jackson E. Reynolds for Central Railroad Company of New Jersey.

Charles Heebner for Philadelphia & Reading Railway Company; Western Maryland Railroad Company; and B. F. Bush, receiver thereof.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

On February 15, 1909, complainant shipped a carload of horses, weighing 22,000 pounds, from Chambersburg, Pa., a station on the Western Maryland Railroad, at the joint rate of 42 cents per 100 pounds via that carrier to Shippensburg, thence over the Philadelphia & Reading to Allentown, thence over the Central of New Jersey to Easton, and from thence over the Lehigh & Hudson to Warwick, N. Y., a total distance of 228 miles. The charges paid were \$92.40.

17 I. C. C. Rep.

It is contended that this rate is unreasonable and discriminatory and reparation is claimed in the sum of \$19.80, based upon the difference between the charge exacted and what it would have been had a rate of 33 cents applied.

The Lehigh & Hudson and the Central of New Jersey in their separate answers admit that the rate of 42 cents is excessive and allege it should have been 33 cents, and consent that an order be entered granting reparation in the amount claimed. The Philadelphia & Reading and Western Maryland deny that the rate is unreasonable.

The parties in this proceeding have been fully heard. From a consideration of all the facts, we are of the opinion that 33 cents was at the time this shipment moved and still is a reasonable rate to be applied to the transportation of horses, in carloads, between these points, over this route, and that this rate ought not to be exceeded for the future, the minimum to be the same as now.

We further find that the complainant is entitled to recover the difference between the charges actually paid at a rate of 42 cents and what he would have paid at a rate of 33 cents, or \$19.80, with interest.

An order will be so issued.

17 I. C. C. Rep.

No. 1839.

OLD DOMINION COPPER MINING & SMELTING COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL. AND 51 OTHER CASES, DESIGNATED BY DOCKET NUMBERS 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890.

Submitted November 13, 1909. Decided December 7, 1909.

Ambiguous and indefinite tariffs, susceptible of and resulting in conflicting interpretations, criticised. Delivering carrier authorized to omit collection of alleged undercharges, it also appearing that the charges assessed were unjust and unreasonable. Rule of present tariff must be made clear and definite.

T. M. Schumacher, R. P. Hegardt, and P. M. Ripley for complainant.

Henry Wolf Bikle and George Stuart Patterson for Pennsylvania Railroad Company; *Pittsburg, Cincinnati, Chicago & St. Louis Railway Company*; *Vandalia Railroad Company*; and *Monongahela Railroad Company*.

G. W. Luce and C. W. Durbrow for Southern Pacific Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These cases were heard together and will be disposed of in one report.

From about January 1, 1907, to November, 1907, there were shipped to the complainant, at Globe, Ariz., from various points, mostly in Colorado, New Mexico, Alabama, Tennessee, Virginia, West Virginia, and Pennsylvania, about 3,700 carloads of coke, which moved over various lines to El Paso, Tex., and thence by the Southern Pacific Railway and the Gila Valley, Globe & Northern Railway to destination. On the greater part of these shipments freight charges were assessed and collected on the basis of actual weights, but during said period the auditing officials of the Southern Pacific Company advised the agent of the delivering line, which is a part of the Southern Pacific system, that the lawfully established tariff then in effect, properly construed, required the collection of freight on the basis of the

weight capacity of the car. Whereupon on subsequent shipments the agent demanded of complainant freight charges on that basis, against the payment of which the complainant protested and refused to settle on the said weight capacity of the car, contending that this was not a proper interpretation of the tariff. Thereafter said delivering line continued to deliver shipments to complainant, presenting two bills for each shipment, one on the basis of actual weight and the other upon the basis of the weight capacity of the car, the former of which was paid by complainant and the latter refused. The delivering carrier then also demanded on all of the prior shipments additional charges based upon the weight capacity of the cars.

On November 6, 1908, complaints were filed in all these cases, setting forth, in substance, among other things, the facts before stated and alleging that the charges made by the defendants, in so far as they exceeded those on the basis of actual weights, were unreasonable, unjust, unduly discriminatory, and unlawful. It was also alleged that on some shipments through charges in excess of the sum of the locals to and beyond El Paso were collected. The prayer is, first, that the defendants be ordered to cease and desist from demanding payment of the balance claimed on the basis of the alleged "unreasonable minimum weight;" second, for the establishment of a just and reasonable minimum for the future; and third, for reparation in the sum of the difference between the through rates charged on any of these shipments and the combination of the locals.

Some months prior to the filing of these formal complaints the matters involved were presented informally to the Commission by the Southern Pacific Company and the complainant for authority to waive the collection by the defendants of the additional demands above those based on actual weights. The Commission did not feel justified, upon the meager presentation of the matter at that time, in taking the action requested of it.

The numerous defendants, other than the Southern Pacific Company and the Gila Valley, Globe & Northern Railway Company, deny generally the exaction, on their account or within their knowledge, of any charges in excess of their reasonable and duly established carload minima, or unreasonable rates. The Southern Pacific Company in its answer admits that charges on these shipments were determined "upon a weight based upon the 'marked weight capacity of car,' and that said charges should be determined upon the weight no greater than the actual weight of the coke loaded upon said car, provided, however, said car was loaded to full space capacity and that said weight was not less than a minimum of 30,000 pounds."

While at the hearing of these cases it was claimed that the present minimum provided by the Southern Pacific Company and the deliv-

ering line is the space-loading capacity of the car, but not less than 40,000 pounds, and while this is doubtless the intent, the tariff provision is not clear on this point. Complainant at that time withdrew its claim for reparation on account of the alleged exaction of through rates in excess of the sum of the locals and, while continuing to allege that the absolute minimum should not be more than 30,000 pounds, did not insist upon an order to that effect nor present any testimony in support of such contention. Neither is it now asked by the complainant that we prescribe a minimum for the future. The only question remaining for disposal by the Commission is that of the lawfulness of the additional charges demanded by the delivering line and the Southern Pacific Company in excess of the actual weight of shipments. Since these alleged excessive charges have not been paid and the prayer of the complainant in respect thereto is only that defendants be required to cease and desist from demanding payment of the same, an order which clearly we would have no authority to make, there seems to be no occasion to enter any order.

Without quoting the ambiguous and uncertain tariff provisions, it is sufficient to say that they produced inexcusable confusion and misunderstanding between the accounting officials of the carriers and the agent of the delivering line.

Prior to the beginning of these shipments, it was provided in Southern Pacific tariff, with respect to coke shipments from El Paso to Globe, as follows:

Not less than full marked weight capacity of car used, but not less than 30,000 pounds.

Upon examination of subsequent amendments and supplements, and in view of explanations made at the hearing, it is believed that the intent of these tariffs prior to October 19, 1907, was to charge on actual weights on cars filled to their space-loading capacity, but not less than 30,000 pounds.

The minimum rule of the Southern Pacific Company, covering the transportation of this traffic from El Paso to Globe, in effect since October 19, 1907, is as follows:

Minimum carload weight, marked weight or space-loading capacity of car used, but not less than 40,000 pounds.

Throughout the period of the shipments covered by this complaint the carload minimum applicable from the eastern points of origin to El Paso was 30,000 pounds by all routes.

In the tariff, effective April 17, 1906, applicable to coke in carloads from Mississippi River crossings and from producing points east of the Mississippi River to Texas stations named therein, El Paso being included, is the following:

Minimum weight. Minimum weight on coal and coke will be 30,000 pounds, regardless of marked capacity of car.

Clearly there is reasonable ground for the position taken by the auditing officials of the Southern Pacific Company in their construction of the tariff provisions applying to these shipments, and these officials are not to be criticised by us for their insistence upon a strict compliance with established tariffs as understood by them; on the contrary, they are to be commended for such action. Only by the faithful application of the tariffs can discrimination and injustice be prevented. By the law there is placed upon the accounting officers of the carriers special individual responsibility in this respect which they can not ignore without incurring liabilities. On the other hand, it is clearly manifest that the minimum rule of the delivering carrier and Southern Pacific Company, as understood and construed by these accounting officials, was grossly unjust and unreasonable as applied to shipments of coke. This fact alone, however, affords no excuse either to the shipper, carrier, or this Commission for disregarding the application of lawfully published and established tariffs. The mandate of the law for their observance is equally binding upon all. The law plainly provides for but one method of getting rid of the unreasonableness or injustice of duly established rates, and that is by their condemnation upon complaint and investigation. They can not lawfully be ignored without the parties to such transaction incurring the penalties of the law. Since, however, in the confusion of these tariffs, there appears to have been reasonable ground for the contention of the consignee, and it further appearing that it paid the published rates on the basis of actual weights upon the cars loaded to their full space capacity, it would seem that we are justified, under the circumstances, in dismissing these complaints, with the understanding that the defendant carriers are hereby authorized to waive or omit the collection of such unpaid charges on these shipments as are based upon assumed weights in excess of the actual weights of the shipments, subject, however, to minimum of 30,000 pounds to the car. No order will be entered regarding the present carload minimum. It will be expected, however, that the rule of the present tariff will be made clear and definite, so that like misunderstanding to that which gave rise to this controversy may not be repeated. If this rule is not made clear the Commission will feel warranted in reopening the case for further action. We can not too plainly indicate that our action in these and other like cases, arising under the conditions referred to, must not be accepted as the basis of excuse for uncertain, conflicting, and confusing tariff provisions which must always give rise to discreditable conditions and practices such as are disclosed in this investigation.

These complaints will be dismissed.

No. 1790.

MEMPHIS COTTON OIL COMPANY ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted April 2, 1903. Decided June 29, 1909.

1. The long-continued maintenance of a lower rate raises no presumption of law that a newly established higher rate is unreasonable. The fact that the lower rate remained undisturbed for many years has probative value and considered merely as evidence must ordinarily have much weight, in the absence of some explanation showing the propriety and need of an increased rate. But in every case all pertinent facts must be considered before an increased rate may be held to be unreasonable and therefore unlawful.
2. On the facts shown of record the present increased rates on cotton-seed oil from Memphis to Louisville, Cincinnati, and Chicago are not found to be unreasonable, although lower rates between those points had been in effect for many years.

Percy & Hughes for complainants and interveners.

Ed. Baxter, R. Walton Moore, and Sidney F. Andrews for Illinois Central Railroad Company.

Ed. Baxter, Wm. G. Dearing and R. Walton Moore for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On October 1, 1908, the defendant carriers made a general advance in their rates, on cotton-seed oil, from all points east of the Mississippi River where such oil is manufactured to all destinations in the north and northeast. The advance to points east of the Alleghenies, such as Buffalo, Norfolk, New York, and Boston, amounted to 5 cents per 100 pounds; the advance to points on or north of the Ohio River, such as Louisville, Cincinnati, and Chicago, amounted to 2 cents per 100 pounds. The increased rates are the subject-matter of this complaint and are alleged to be unreasonable.

The petition was filed by a number of corporations, companies, and private individuals, embracing dealers, brokers, and manufacturers

of cotton-seed oil at Memphis. At the hearing counsel for the original complainants, on behalf of eight companies operating oil mills at various points in Mississippi and Tennessee, filed intervening petitions in which complaint is made of the advance as applied to that territory. But no testimony of a substantial nature was introduced in behalf of the interveners. The record as made relates almost entirely to the reasonableness of the advanced rates from Memphis. Much crude cotton-seed oil is refined at Memphis, and the increased rates of which complaint is made are understood to apply to the oil that is refined at that point as well as to the crude product of the Memphis crushing mills; but the record is confined largely, if not altogether, to the effect of the advance upon the crude-oil industry. Moreover, it was shown that nearly all the crude oil manufactured at Memphis is shipped to Louisville, Cincinnati, and Chicago, very little, if any, being used by refineries east of the Alleghenies. It is our purpose, therefore, to consider only the present rates on cotton-seed oil from Memphis to those three points. It may be well here to state, that, prior to the date upon which the advanced rates were to become effective, but after the new schedule had been filed with this Commission, the proprietors of the crushing mills at Memphis undertook to enjoin the advance by filing a bill in equity in the United States circuit court at Memphis. That court dismissed the proceeding on the ground that it did not have jurisdiction over the persons of the defendants. The complainants then filed a similar bill in the United States circuit court at Chicago, which was dismissed on the ground that the reasonableness of the proposed rates of the defendants was a matter peculiarly within the cognizance of this Commission.

The federal census reports indicate that the manufacture of cotton-seed oil began in this country as early as 1872 and had reached substantial proportions in 1875. It is used extensively in the manufacture of soap, packing-house products, oleomargarine, cosmetics, and other articles in general commerce. Apparently it is transported in quantity to France and Italy and there used in the manufacture of an article ostensibly sold in this country as olive oil. For all such purposes the crude oil as it comes from the crushing mills requires refining, and Memphis is the largest center of crude oil production in the south. It draws its supplies of cotton seed from an extensive district and largely by rail, although some seed comes in by water and small quantities are brought in by wagon from the outlying cotton plantations. The records of the Memphis Merchants Exchange show that from 1900 to 1907, inclusive, the amount of cotton seed crushed by mills at that point averaged annually about 95,000 tons. A ton of seed will ordinarily produce 40 gallons of oil, 775

pounds of meal, 725 pounds of hulls, and 45 pounds of lint. During the year 1908, as the records of that exchange indicate, the mills at Memphis crushed 149,000 tons of seed. Their output of crude oil was therefore in excess of 5,000,000 gallons, if the reports of the Memphis exchange are to be accepted as accurate. It is also said that during that year the mills delivered to the carriers 900 carloads of crude oil and 6,200 carloads of other commodities which are the by-products of the industry. These figures are taken from the record and from the briefs and, although some errors are made on both sides in the statement of the results of the mill operations for 1908 and in the calculations based upon the figures for that year, enough seemingly appears to justify the assertion, made at the hearing and repeated on the argument, that the cotton-oil mills of Memphis furnish to the railroads an outbound tonnage exceeded probably only by the outbound tonnage of lumber, grain, and raw cotton.

The increased rates are attacked in the petition on the ground that they are unjust, extortionate, and prohibitive. It is also alleged that they will materially damage the business of the complainants and subject them to substantial loss of a consequential character in that the advance will embarrass and injure the industry at Memphis and will drive its mills out of certain markets in which they have theretofore competed. The carriers on the other hand defend the advance by insisting that the rates in effect prior to October 1, 1908, were unreasonably low and were originally established to meet a water competition that subsequently disappeared. Apparently this competition was active while it existed, for some of the first mills at Memphis were built on the river banks. Practically all the mills now in operation are on the lines of the railroads. Oil was first carried in barrels and the earliest rail rates were barrel rates, established, as it is said, to meet the package rates of the river lines. Afterwards tank cars came into use and proved a much more satisfactory method of transporting oil. As boats can not conveniently carry oil in tanks the result was that competition by water in the transportation of oil gradually ceased, and it is now doubtful whether even a potential competition by water may be said to exist, except for the comparatively small movement still made in barrels. But the record fairly establishes the contention of the defendants that the schedule of oil rates in effect prior to October 1, 1908, was originally established to meet the competition of water lines. No other fact is suggested to explain why the rates from Memphis and New Orleans should have been so materially lower than the rates on cotton-seed oil from inland points.

The history of the cotton-seed oil rates from Memphis to Louisville, Cincinnati, and Chicago is a brief one. The earliest tariff exhibited

at the hearing became effective in 1888 and named a rate of 15 cents per 100 pounds to Cincinnati. The first rate shown on the record from Memphis to Louisville was 12 cents per 100 pounds and was made effective in 1891, but an investigation of our tariff records discloses the fact that the 12-cent rate to Louisville was in effect over the Louisville and Nashville Railroad as early as 1888. Our tariff files also indicate that an 18-cent rate was in effect from Memphis to Chicago in 1889. Although the record indicates that the competition of water lines ceased to have any influence some time prior to 1894 and since that time the movement of oil by water carriers has not been an appreciable factor in the oil traffic, nevertheless none of these original rates was disturbed until the advance of October 1, 1908, which was the occasion of this complaint. It is said that the maintenance of the original rates, after competition by water had ceased, gave rise to protests on the part of the rate makers of some of the defendants, who insisted that they were unreasonably low and ought to be raised. There were some conferences in relation to the matter at various intervals before the rates were advanced, but no understanding was arrived at until October 1, 1908. The tariff that then became effective added 2 cents per 100 pounds to the rates named, and the present rates from Memphis are therefore 14 cents per 100 pounds to Louisville, 17 cents to Cincinnati, and 20 cents to Chicago.

Although the advance affects all the territory east of the Mississippi River, in which not less than 500 oil mills are said to be in operation, we are impressed by the fact that no complaint from those quarters has reached us except the intervening petitions of eight mills filed at the hearing by counsel for the original complainants. While counsel insists that the Memphis interests are making the fight, not only in their own behalf but in behalf of all the mill interests in the south east of the Mississippi River, there is no indication in the record of any dissatisfaction with the present rates except on the part of the Memphis mills that are actually before us. Counsel explains this by saying that "while the oil-mill interests in other sections have not been sufficiently aroused to initiate proceedings of their own or to join in this proceeding, yet if this proceeding were successful it is quite certain sufficient interest would be created to bring about a reduction to the former rates." The complaint can not even be said fully to represent the attitude of the oil industry at Memphis on the question of the reasonableness of the present rates. Counsel for the complainants frankly advised the Commission at the hearing that the Southern Cotton Oil Company, said to be the largest concern of the kind at Memphis, had requested him to withdraw its appearance as a complainant. Counsel for the defendants also read a letter from the Richmond Cotton Oil Company, named as one of the complain-

ants and a large producer of cotton-seed oil, expressing its lack of interest in the proceeding. The Tennessee Cotton Oil Company, the annual output of which approaches that of the Southern Cotton Oil Company, did not join in the petition at all. It is said that the total annual production of these three companies is over 1,500,000 gallons, which is probably about 30 per cent of the total annual cotton-seed crush of all the mills at Memphis. It therefore appears that a substantial part of the oil interests of that community must be understood as being affirmatively out of sympathy with the complaint. Whether this lack of interest in the proceeding is due to a belief that the present rates are not unreasonable or to some other cause is a matter for conjecture. Counsel for the complainants explains their silence by saying that there is a disposition on the part of shippers to acquiesce in rate advances without resorting to the Commission to have them corrected. But a more likely explanation is the fact that oil is uniformly sold f. o. b. the mill and is moved in the tank cars of the purchasers. "The result is," says counsel for the complainant, "that the oil-mill manufacturers as a rule feel that the additional rate is paid by the purchaser." He then says that unless the refiners who purchase it have some ulterior reason to acquiesce in the advance, they also doubtless feel that they do not pay the advance. Whether the burden falls on the cotton planter or on the cotton-seed oil mills or on the refiners or on the consumers of the output of the refiners counsel does not undertake to say; but he asserts, and this is undoubtedly true, that the carriers get an increased revenue from the present rates.

As heretofore stated 149,000 tons of cotton seed are said to have been crushed at Memphis during the year 1908, and at the rate of 40 gallons of oil per ton of seed the yield of oil was 5,960,000 gallons. A gallon of cotton-seed oil weighs $7\frac{1}{2}$ pounds, and the total production during that year, therefore, aggregated 44,700,000 pounds. Assuming that all this oil was actually manufactured and shipped out of Memphis, the increase in the rate, applied to the traffic of that year, would have netted to the carriers a gross addition to their revenue of but \$8,940. The defendants, however, deny that so much seed was crushed and that all the oil manufactured at Memphis was shipped out during that year or is customarily shipped out during any year. They assert that the outbound tonnage in 1908 did not exceed 30,000,000 pounds. According to this estimate the aggregate increase in the revenue of the defendant carriers, applied to the traffic of that year, would not have exceeded \$6,000, and they intimate that exact figures would show even a less increase. It is not improbable that the smallness of the additional burden imposed on the traffic by the increase is the explanation of the wide indifference to this proceeding on

the part of the numerous oil mills affected by the advanced rate. The addition of 2 cents per 100 pounds for the transportation of the oil adds but fifteen one-hundredths of a cent to its cost per gallon, a result which may well leave the producers, the crushing mills, the refineries, and the consumers in some doubt as to who actually bears the burden. Nevertheless the advance does result in an increase in the revenues of the defendants, and this burden is borne either separately or collectively by the producer, the consumer, the crushing mill, or the refinery. We must, therefore, look further into the record with a view to ascertaining what it discloses in support of the allegation that the increased rates from Memphis are unreasonable.

The rates in effect prior to October 1, 1908, had remained undisturbed for many years, and on this fact is the case of the complainants largely rested. The long maintenance of those rates, says counsel, after the disappearance of actual or potential water competition, "if such competition ever existed," proclaims such rates as voluntary and compensatory and shifts the burden of proof to the carrier to justify the increase. This argument, when analyzed, seems in substance to be that an increase in long-established rates raises a presumption of law that the advanced rates are unreasonable. That doctrine, however, appears to have been disposed of as unsound in *Interstate Commerce Commission v. Chicago Great Western Ry. Co.*, 209 U. S., 118, and had never been fully accepted by this Commission. While something of that general import is to be found in its earlier decisions, the later decisions make it clear that it never became an established doctrine with us. The reasonableness of a rate must of necessity depend upon the conditions surrounding the traffic at the time it moves. The length of the haul, the competition to be met, the cost of the service, the value of the service, the density or volume of the tonnage, as well as the general transportation conditions then existing, are factors that have a more or less definite relation to the rate that a carrier may reasonably demand for a transportation service. And these factors, except possibly the length of the haul, the grades, and other transportation conditions, are in their nature neither permanent nor fixed, but necessarily change with the general economic panorama. No presumption of law, therefore, can arise against an advanced rate simply because a lower rate previously existed.

An advance in a long-established rate at once suggests the propriety of an inquiry of the carrier for a statement of its reasons for making the advance. But in making its explanation, if we correctly understand the meaning of the court in the case above cited, the carrier is not under the necessity of overcoming the technical weight and force of a presumption of law that the previously existing lower rate was a reasonable rate. The long continuance of a lower rate may be said

to raise a presumption of fact that the advanced rate is unreasonable. But this in a sense is no presumption at all, for it can not carry us beyond the actual tendency of the fact itself to produce that belief in the mind of the investigator. The fact that the lower rate has long remained undisturbed has strong probative value. Considered merely as evidence, such a rate history, in the absence of some explanation that satisfies the judgment of the propriety and need of an increase in rates, would ordinarily have great force. But in every case we must consider and weigh all the other facts of record before arriving at the conclusion that the increase in rates was unreasonable and therefore unlawful.

There are many facts that are discussed in this record and were considered by counsel on the argument. Of especial importance is the fact that the transportation of cotton-seed oil from Memphis to Louisville, Cincinnati, and Chicago is an expedited service. This is not due to the fact that the traffic itself requires such a service, for cotton-seed oil is an unusually stable liquid and is not readily spoiled or damaged in transit. The service is one of expedition largely, if not altogether, because of the arrangements between the buyer and the shipper. The traffic is carried in tank cars provided by the refiners and is subject to the rules and regulations of the Memphis Merchants' Exchange, which provide certain demurrage charges to be paid by the refiners or buyers in case of delay in furnishing the cars, and to be paid by the crushing mills when the cars are detained by them for loading beyond a certain time designated in the regulations. In some cases demurrage is assessed under the rules of the exchange because of the slow movement of a car. The result of the regulations, together with the fact that the equipment is privately owned and the owners desire to get the best possible use of their cars, is that the defendants are subjected to constant demands for rapid service and such service is in fact provided. The record shows that the expedited service not only necessitates a smaller tonnage per train than ordinary freight, but is attended by some extra expense to the defendants in the way of telegraphing and additional employees. The defendants pay the owners for the use of the tank cars a rental of three-fourths of a cent per mile, which is assessed on the empty as well as on the loaded movements. The tank cars are said to make an average of 83 miles a day and therefore cost the carriers 63 cents a day in mileage, while other cars average 21 miles per day and cost them a per diem of 25 cents.

The average weight of oil in a modern tank car is about 55,000 pounds, and the value of the oil is about \$2,500. At the present rate of 20 cents per 100 pounds to Chicago the defendant carriers earn \$110 per car, or at the rate of 7.5 mills per ton-mile. If, however, the return empty movement of the car be taken into consideration the

actual earnings per ton-mile are of course materially reduced, in fact by nearly one-half. The rate on cotton seed from Memphis to Louisville is 12 cents per 100 pounds, and the value of a carload of about 40,000 pounds is in the neighborhood of \$270. The rate on a carload of 55,000 pounds of cotton-seed oil from Memphis to Louisville is 14 cents per 100 pounds, while the value of the carload, as above stated, is about \$2,500. It is true that cotton seed is much more readily damaged in transit than is cotton-seed oil, and its transportation therefore often results in damage claims, which arise rather infrequently upon shipments of oil. But if the 12-cent rate on the seed is a reasonable rate, and it has not been attacked, it would seem to follow, all things being considered, that the 14-cent rate on the oil, in view of the great difference in its value, is not an unreasonable rate.

The fact that has most impressed us upon a study of this record is that Memphis has always enjoyed an advantage in respect to its rates on the commodity here involved. This advantage it could properly have so long as the rail rates were actually affected by active or strongly potential competition by water lines. There was no reason, however, why it should have continued to have this advantage after 1894, when water competition ceased and was no longer an appreciable factor in the oil traffic. It has, nevertheless, continued on a better rate basis than any other point in the territory involved in the rate advance of October 1, 1908. Much evidence was introduced by the defendants to show that the rates from Memphis have been and are now more favorable than the rates from any other point in the south, and this fact was substantially admitted by counsel for the complainants, who expressed his purpose not to controvert the proposition at all. From the rate tables submitted at the hearing it appears that the present rates from Memphis to the destinations in question are in every instance lower than from milling points west of the Mississippi River, and with but one or two exceptions this same favorable adjustment seems to exist as to milling points east of the river. The advance of 2 cents was uniform and did not change the relation in rates as between those points and Memphis. A few illustrations by way of comparison will show the advantage in rates that Memphis now enjoys and has for many years enjoyed over other competing milling points. It is 487 miles distant from Cincinnati, and its present rate to that point is 17 cents per 100 pounds. Atlanta, 476 miles distant, and Birmingham, 481 miles distant, each pay a rate of 25 cents per 100 pounds. Chattanooga, 338 miles distant from Cincinnati, pays a rate of 18½ cents per 100 pounds. Jackson, 417 miles distant, pays a rate of 22 cents. Nashville, only 297 miles from Cincinnati, pays the same rate as Memphis, with its haul of 487 miles.

Holly Springs, in the state of Mississippi, 488 miles from Cincinnati, pays a rate of 27 cents. Substantially the same advantages are observable upon a comparison of the Memphis rates to Louisville and Chicago with rates to the same destinations from the various points that have been named.

In meeting the allegations of the complaint the defendant carriers assert that Memphis has always enjoyed differential rates. This advantage, however, was not only voluntarily accorded to Memphis during a period of years, but was voluntarily carried by the defendants into the new tariffs of which complaint is here made. Notwithstanding this inconsistency in the attitude of the defendants with respect to these rates, it is nevertheless true that Memphis enjoys more favorable rates than the other mill points that have been mentioned; and, without intending to be understood as justifying the advance of 2 cents made in the cotton-seed oil rates from this territory on October 1, 1908, as applied to other milling points, we are forced to the conclusion that so far as the advance affects Memphis it produces no result of which it may justly complain. Its present rates to Louisville, Cincinnati, and Chicago compare favorably even with the rates in effect, from other milling points in this territory, prior to the advance in question. This previous schedule of rates remained in effect many years and was accepted by shippers without objection. It may be assumed, therefore, that those rates were not excessive; and upon this assumption it is impossible to see upon what basis the present rates from Memphis may be regarded as excessive. Confining our ruling therefore strictly to the issue as we have defined it in this report, the record has failed to satisfy us, nor do our own investigations show, that the present rates from Memphis to those three destinations are unreasonable.

The petition must therefore be dismissed, and it will be so ordered.

No. 1952.

T. H. SPRINGER

v.

EL PASO & SOUTHWESTERN RAILROAD COMPANY ET AL.

Submitted March 26, 1909. Decided December 7, 1909.

Carrier having for its own convenience furnished shipper two smaller cars instead of one of capacity ordered; *Held*, That it was unreasonable to charge on basis of combined minima of two cars furnished. Reparation awarded.

Rufus B. Daniel for complainant.

Hawkins & Franklin for El Paso & Southwestern Railroad Company and Chicago, Rock Island & Pacific Railway Company.

A. G. Briggs and *George W. Markham* for Chicago Great Western Railway Company and Receivers.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

Complainant delivered to the defendant Chicago Great Western Railway on October 9, 1908, at Chicago, Ill., a shipment of furniture and requested a 50-foot car. The company furnished for its own convenience one 40-foot car and one car of smaller dimensions. Part of the shipment moved in the 40-foot furniture car, and a rate was assessed on a minimum applicable to a car of that capacity; the rest of the shipment, weighing 3,900 pounds, moved in the smaller car. This shipment moved under joint tariff, and the initial carrier, Chicago Great Western Railway Company, admits that the total charges on the shipment of furniture from Chicago, Ill., to El Paso, Tex., should not have exceeded \$240.24; that it received \$63.39 for its proportion of the charges from Chicago to St. Joseph, Mo. At St. Joseph the shipment was transferred to the Rock Island road, which handled it in connection with the El Paso & Southwestern to El Paso, Tex. The total charges, \$287.07, were assessed in accordance with legally established tariffs. Complainant demands reparation in the sum of \$46.83, the difference in the rate applicable to a 50-foot car, and the rate which

was assessed on the shipment. The entire shipment could have been loaded into a 50-foot car, the minimum on which was 23,100 pounds, and it is only by reason of the failure of the initial carrier to furnish the car ordered that complainant was compelled to pay a higher charge. The bill of lading issued by the Chicago Great Western Railway Company shows that a 50-foot car was ordered, and that two smaller cars were furnished.

An examination of the tariffs on file with the Commission indicates that there was no "two-for-one" rule in effect at the time this shipment moved, or is at the present time, which could have been lawfully applicable to the shipment. A carload rate and a minimum weight for a car of definite dimensions, when lawfully published in the tariffs of a carrier, constitute an open offer to the shipping public to move merchandise on those terms; and there should be a rule in the tariffs to the effect that when a carrier is unable to furnish the car of size ordered and for its own convenience furnishes two cars in lieu thereof, it should do so on basis of the rate and minimum weight published in the tariffs and applicable to the car of size ordered by the shipper. It would be wholly unsound in principle to permit the carriers to impose additional transportation charges on a shipper who orders a car of the capacity, length, or dimensions specified in its tariffs simply because the carrier is not provided with cars of dimensions ordered. The tariffs of defendants were unreasonable and unlawful in that they did not contain some provision substantially similar to the rule above stated or minimum rules such as to render unnecessary a provision of this sort. *Pacific Purchasing Co. v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 549; *General Chemical Co. v. N. & W. Ry. Co.*, 15 I. C. C. Rep., 349; *Kaye & Carter Lumber Co. v. Minnesota International Ry. Co.*, 16 I. C. C. Rep., 285. Reparation is therefore awarded in the sum of \$46.83, with interest. It is understood that the carriers have under consideration the establishment of suitable rules intended to obviate such injustice as occurred in connection with this shipment. Therefore no order will be made at present other than for reparation.

The complainant having died since this action was begun, the sum awarded should be paid to the legal representative of his estate.

An order will be entered accordingly.

17 I. C. C. Rep.

No. 2029.
CARSTENS PACKING COMPANY
v.
OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted June 1, 1909. Decided December 7, 1909.

1. Upon the facts of record, *Held*, That defendants' carload rates exacted on shipments of complainant's cattle from Glenn's Ferry and Mountain Home, Idaho, to Tacoma, Wash., were unreasonable and ought not to have exceeded the rates that were subsequently voluntarily established by the defendants from those two points. Reparation awarded.
2. Defendants' contention that competition justified the lower rates for the longer haul not sustained.
3. Special Circular No. 6 construed to mean only that after October 1, 1908, no rate appearing in a tariff would be held to apply from intermediate points unless the tariff affirmatively so provided.
4. The question of the validity of a 10-car rate referred to but not discussed.

Ellis, Fletcher & Evans and *J. E. Belcher* for complainant.

W. A. Robbins, W. W. Cotton, P. L. Williams, F. C. Dillard, and Chas. H. Bates for Oregon Short Line Railroad Company and Oregon Railroad & Navigation Company.

C. W. Bunn, C. A. Hart and *J. W. Quick* for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The main line of the Oregon Short Line Railroad extends in a northwesterly direction from Granger, in the state of Wyoming, through Pocatello, Idaho, to Huntington, in the state of Oregon. At the latter point its rails join the rails of the Oregon Railroad & Navigation Company, which in turn connects at Wallula Junction, in the state of Washington, with the Northern Pacific, on whose rails the city of Tacoma is situated. At Pocatello a branch line of the Oregon Short Line runs almost directly north through Blackfoot, Idaho Falls, and Du Bois, points in the state of Idaho, and thence to Red Rock and beyond to Silver Bow, both being stations in the state of Montana. At Silver Bow the Oregon Short Line makes a junction

with the Northern Pacific. Traffic from points on the branch line may therefore move to Tacoma over two routes, the Oregon Short Line being the initial carrier and the Northern Pacific the delivering carrier in each case. For convenience we shall here refer to the route through Pocatello, Huntington, and Wallula Junction as the southern route, and to the route by way of Silver Bow as the northern route.

Glenn's Ferry and Mountain Home are on the southern route, in the state of Idaho, and are intermediate to Pocatello and Huntington. On 12 carloads of cattle shipped on September 12, 1908, to Tacoma from Glenn's Ferry, and on 17 carloads of cattle shipped on September 15, 1908, from Mountain Home to the same destination, freight charges to the amount of \$4,205 were demanded and collected from the complainant, being at the rate of \$145 per car. This rate, which was applicable on shipments of 10 cars or more, is alleged to be unreasonable because it exceeded a 10-car rate of \$129.80 to Tacoma in effect at the same time over the southern route from Blackfoot, Idaho Falls, and other points in Idaho, and also from Red Rock, in Montana, all of which points are located on the branch line of the defendant extending north from Pocatello and at considerably greater distances from Tacoma than are Mountain Home and Glenn's Ferry. Shipments to Tacoma over the southern route from these points on the branch line move through Mountain Home and Glenn's Ferry. The higher rates from the intermediate points result, as we understand the substance of the allegations of the complaint, in a violation of section 4 of the act. It is also alleged that the rates charged were unreasonable in and of themselves. Reparation is demanded in the sum of \$440.80, which amount represents the difference between the charges actually collected at the rate of \$145 per car and the charges that would have been collected had the rate of \$129.80 in effect at the time of these shipments from Idaho Falls to Tacoma been applicable from Mountain Home and Glenn's Ferry as intermediate points.

As an incident to the issue the complainant maintains that it was led to make purchases of cattle for these shipments because of the omission of the defendants to amend their tariffs so as to show whether or not the lower rates from Idaho Falls and Red Rock would apply from intermediate points like Glenn's Ferry and Mountain Home. It interprets special circular No. 6 of the tariff department of the Commission, promulgated on January 7, 1908, as requiring carriers to make such amendments before July 1, the time being extended later to October 1, of that year. And as the defendants failed to amend their tariffs in that respect before the last-mentioned date the complainant contends, as a matter of law, that the lower rate from the more distant points must be held to have applied from the intermediate points. We do not understand that such is the effect of special circu-

lar No. 6. As extended it was intended to mean only that after October 1, 1908, no rate appearing in a tariff would be held to apply from intermediate points unless the tariff affirmatively so provided; and when so provided the rate was to be applicable not as a maximum but as the definite rate. That contention on the complainant's part has therefore no merit and may be disregarded.

Under section 4 of the act the burden rests upon a carrier to justify a rate from an intermediate point that is higher than the rate from a more distant point when the shipment moves over the same rails and in the same direction. The principal defendant has made an effort on this record to sustain that burden. It has endeavored to prove that its rates over the southern route from Blackfoot, Idaho Falls, and Red Rock were compelled by competition for the same traffic over the northern route. It has endeavored to show competitive conditions north of Pocatello that did not exist west of Pocatello. It is said that for a radius of 50 miles around Glenn's Ferry and Mountain Home the country is sparsely populated and produces only a light volume of cattle traffic. On the other hand, extensive irrigation improvements by the government and important private enterprises have drawn a more or less large population to the country north of Idaho Falls. In this region, known locally as the "Big Hole country," about 15,000 head of cattle are fed during the winter months, and they can readily be driven to Anaconda on the Northern Pacific or to Red Rock on the Oregon Short Line and thence shipped to Tacoma. And for this traffic, as the principal defendant contends, the northern and the southern routes compete, the northern being the more direct route from Red Rock, while the southern is perhaps the more direct route from Idaho Falls and Blackfoot.

It may be true that the 10-car rate of \$129.80 then in effect to Tacoma from Blackfoot, Idaho Falls, and Red Rock, and on the basis of which reparation is asked, was a competitive rate from Red Rock. It is to be observed, however, that there was no 10-carload rate then in effect from that point over the northern route, and the single-carload rate was a combination of a local of \$28 from Red Rock to Silver Bow and a local rate of \$110 from Silver Bow to Tacoma, making a through charge over the northern route of \$138 for a single-car movement. At the same time the single-car rate from Red Rock to Tacoma over the southern route was so high as to indicate that it could not be, and was not in fact used. In other words, the 10-carload rate of \$129.80 over the southern route had no rate to meet over the northern route from Red Rock except the combination rate of \$138 for a single-car movement. Under such circumstances it is not altogether clear that the 10-carload rate was put in from Red Rock for competitive reasons, but that may nevertheless be conceded for the purposes of this case.

Whatever may have been the force of competitive conditions at Red Rock, we are not satisfied that the competition of the northern route extended so far south as Idaho Falls and Blackfoot and justified lower rates from those points over the southern route than were accorded at the same time for the shorter haul over that route from Glenn's Ferry and Mountain Home. The principal defendant asserts that it was led to extend the 10-carload rate of \$129.80 to Idaho Falls and Blackfoot as the result of the importunities of the complainant and other shippers. However that may be, the record discloses that within seven months after the date of the shipments in question the 10-carload rate of \$129.80 from Blackfoot and Idaho Falls over the southern route to Tacoma was canceled and a single-car rate of \$145 was made effective. Upon asking at the hearing for an explanation of this course we were advised that the principal defendant desired to confine the rate of \$129.80 to Montana points. In other words, as we may justly infer, the competition of the northern route from Idaho points, including Idaho Falls and Blackfoot, had been found not to be strong enough to warrant that rate from those points over the southern route. Moreover, within seven months after these shipments had moved the defendants voluntarily withdrew the 10-car rate of \$145 from Glenn's Ferry and Mountain Home and in its place established a single-car rate of \$131.80 from Mountain Home and \$132 from Glenn's Ferry. The rates from these two intermediate points were, within a few months after the shipments had moved, thus brought into relation with the new single-car rate of \$145 from Idaho Falls, Blackfoot, and Pocatello.

After a very careful consideration of all the facts disclosed by the record, we have arrived at the conclusion that at the time the complainant's shipments moved from Glenn's Ferry and Mountain Home the rate of \$145 was excessive and ought not to have exceeded the rates that were subsequently voluntarily established by the defendants from these two points. The actual existence of competitive conditions justifying the lower rate from the more distant Idaho points is not clearly shown, but as the violation of section 4 of the act is not specifically alleged in the complaint we may properly deal with the claim for reparation on the basis of the present rates rather than under that provision of the law. We therefore find that the complainant is entitled to reparation in the sum of \$380.40, with interest, being the difference between the total charges actually collected on the shipments at the rate of \$145 per car and the aggregate amount that would have been collected on the 12 carloads shipped from Glenn's Ferry at the rate of \$132 per car of 36 feet and 6 inches in length, subsequently put in effect, and on the 17 carloads shipped from Mountain Home at the new present rate of \$131.80 for cars

of that length. We also find that a reasonable rate for the future will not, on cars of that length, exceed \$132 from Glenn's Ferry and \$131.80 per car from Mountain Home.

The record presents in an emphasized form the question of the validity of a 10-car rate. Because of the long-continued practice of carriers to which the commerce of the country had adjusted itself the Commission early in its history accepted as valid and justified a carload rate that was less proportionally than the rate on a less-than-carload shipment of the same commodity. But whether that principle may wisely be extended further so as to justify what may be called wholesale rates—that is to say, rates established by carriers on the theory that a shipper who is able to deliver traffic in 10 or more cars is entitled to lower rates proportionally than a shipper who is able to deliver traffic by the carload only, is a very doubtful question. It has not been argued in this proceeding, although the question is somewhat involved in the issues presented, nor is any ruling on the question necessary to sustain the disposition made of the complaint. It is referred to only because we desire it to be understood that nothing herein said shall be taken either as an approval of or acquiescence in a 10-carload rate, or, to use a convenient phrase, in wholesale rates of any kind beyond the carload rate.

An order will be entered in accordance with the finding herein.

17 I. C. C. Rep.

No. 2183.

PETER SCHOENHOFEN BREWING COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted April 26, 1909. Decided December 13, 1909.

Complaint asking reparation for alleged excessive charge on shipment of beer kegs from Frontenac, Kans., to Chicago, Ill., not sustained.

Anthony Zeman for complainant.

F. B. Houghton and *J. L. Coleman* for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complaint asks reparation on account of an alleged excessive charge for the transportation of a carload of empty beer kegs from Frontenac, Kans., to Chicago, Ill. The rate imposed was 17½ cents. The complainant insists that this ought not to have exceeded 11 cents, which had been for some time previously the rate.

The shipment weighed 15,000 pounds, and the total charges for the service were \$26.25. Of this the Atchison paid \$4 for the absorption of a delivering switching charge in Chicago, leaving that company \$22.25 for hauling this carload from Frontenac to Chicago, a distance of 639 miles.

Rates upon beer, and especially upon the empty kegs when returned, between Chicago and Frontenac had been forced down to a low figure by severe competition of carriers and markets, and this accounted for the rate of 11 cents previously in effect. At the time of this movement rates upon the empty kegs had been generally advanced, and there was then no competitive reason which required the application of a lower rate than 17½ cents to this shipment. Manifestly the rate applied did not yield the carrier an excessive return for the service.

The complaint will be dismissed.

17 I. C. C. Rep.

No. 2785.

TYSON & JONES BUGGY COMPANY

v.

ABERDEEN & ASHEBORO RAILWAY COMPANY ET AL.

Submitted September 16, 1909. Decided December 7, 1909.

1. Complaint of an overcharge dismissed, the defendants having refunded the amount, but only after formal complaint had been made and copies served upon them.
2. Carriers criticised for their lack of prompt attention to plain overcharge claims and for their delay in adjusting them.

G. M. Stephen for complainant.

Henry A. Page for Aberdeen & Asheboro Railway Company.

J. L. Eysmans for Cumberland Valley Railroad Company.

Chas. Heebner for Philadelphia & Reading Railway Company.

Jackson E. Reynolds for Central Railroad Company of New Jersey.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Without entering into the details of this complaint it will suffice to say that, as presented on the pleadings, it involves a small overcharge upon a shipment of iron wagon axles made by the complainant, in November, 1907, from Wilkes-Barre, in the state of Pennsylvania, to Carthage, in the state of North Carolina. The overcharge resulted from the inadvertent collection at destination of the fourth class instead of the fifth class rate as required under the published tariffs of the defendants for a portion of the haul. The complainant, being advised of the fact that the fifth class rate was the legal rate, made demand upon the Aberdeen & Ashboro Railway Company, the delivering carrier and principal defendant, for a refund of the overcharge. That company, although it had collected the charges on the shipment, apparently declined to investigate [the matter at all, and contented itself with referring the complainant to the several carriers back along the route of the movement to the point of origin. After a rather extensive but fruitless correspondence in relation to the matter the complainant called it informally to the attention of

the Commission. No result followed from our efforts to get the serious attention of the principal defendant to the complainant's claim. Finally this formal complaint was filed. Promptly after copies of the complaint had been served upon the defendants and they had thus been put in a position where they were compelled to look into the matter it was ascertained that the complainant's contention was well founded and the amount of the overcharge was at once refunded.

In moving the dismissal of its petition the complainant advises us that it has a number of such claims still pending with various carriers the settlement of which it has been unable to secure notwithstanding its earnest efforts in that behalf, and it asks that some action be taken by the Commission in order that shippers may secure more prompt adjustment by carriers of overcharge claims. An order will be entered dismissing the complaint upon motion of the complainant; but we think the time has come for some comments by the Commission in relation to the practice of carriers in such matters.

From shippers in all parts of the country, and from local traffic associations which are making earnest efforts on fair and reasonable lines to secure a reform in the practices of carriers in this regard, many complaints have been received during the past year of the inattention of carriers to plain overcharge claims and of their delay in adjusting them. And a survey of these complaints has led us to the conclusion that this practice, or rather lack of practice, among carriers is open to severe criticism.

A substantial portion of the time and labor of this Commission is given to the effort to secure, through informal correspondence, the settlement of claims of this character, and it is a burden from which we ought to be relieved by carriers. On the other hand, from the shippers' point of view, nothing in connection with transportation is more vexing and irritating than the labor and delay incident to the following up of an overcharge claim and securing its repayment. When an undercharge occurs it is promptly discovered by the accounting departments of carriers when revising the billing, and demand is at once made on the shipper for payment. With equal facility overcharges are also detected by accounting officers. But from the complaints that reach us it seems to be the duty of no one in the interior organization of many carriers to see that the amount is refunded to the shipper. And when an overcharge is detected by a shipper himself, he is able in the great majority of cases, if we may form conclusions from the numerous complaints now before us, to secure its repayment only after his patience has been sorely tried by the effort and delay required in order to secure serious attention to his demand.

Without wishing to be understood as expressing the view that this loose practice with respect to overcharge claims is characteristic of all interstate carriers, it is nevertheless so common as to justify some attention by the Commission. Apparently it is not understood as fully as it should be, by railroad officials charged with the adjustment of such matters, that the retention by a carrier of an overcharge not only has all the effects of an unjust discrimination against the shipper from whom the excess has been demanded, but leaves the transportation transaction in an unlawful condition, both under the act to regulate commerce and under the Elkins Act, until the overcharge has been adjusted. We are advised that the delay in making repayment is frequently due, not to the failure to discover the overcharge, but to the efforts of the delivering carrier to ascertain before making the refund to the shipper which carrier participating in the movement is responsible. This is not a proper practice. The shipper is entitled to repayment from the carrier that has collected the freight charges as soon as it appears that an overcharge has in fact been made. When the refund has been made it is then that carrier's duty to see which of the carriers that participated in the movement is responsible and charge it accordingly. When the overcharge has been discovered it should immediately be repaid by the carrier that collected the charges, and this should be done whether a demand has been presented by the shipper or not.

We well understand that the adjustment of claims is a matter that requires time and that they can not safely be paid until after the facts have been fully investigated. But in our judgment the claims offices of carriers should be so organized as to enable them to dispose of all overcharge claims within thirty days, except those of unusual or special character, and such claims ought to be disposed of within sixty days at the utmost. We refer now to plain overcharge cases. The phrase "overcharge" as used by the Commission embraces only cases where carriers have demanded and received a rate in excess of the published rate. We do not use that phrase in referring to cases where the published rate has been collected but is alleged on one ground or another to be an excessive rate. As to the latter class of claims, many of which are adjusted informally by the Commission, it seems to us that the complaints of shippers ought to be investigated and put before us for disposition within ninety days in the great majority of cases.

The amended act to regulate commerce gives the Commission no authority to establish any limit of time for the adjustment of claims or any authority to discipline carriers that are not attentive to their plain duty in such matters. The adjustment of claims, however, is a matter which the carriers themselves, in good faith to the shipping

public, ought to take hold of so as to reach results within a reasonable time; and we shall expect the cordial cooperation of all carriers in our request that their claims departments be so organized as to give more prompt results, to the end that all occasion for the well-founded complaints that shippers now make may be removed. Carriers owe it to themselves not to put the Commission under the necessity of calling this matter to the attention of the Congress and asking for power to compel them to do what, in their own interest and in fairness to shippers, should be done on their own initiative.

No. 2447.

CROWELL & SPENCER LUMBER COMPANY

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted July 10, 1909. Decided December 13, 1909.

1. This Commission can not permit a refund applicable to a particular shipment for the sole purpose of enabling carriers to make good a rate not in effect when the shipment moved, but which they had agreed to protect. Such a practice would do away with the published tariff altogether if generally applied.
2. Defendants' rate of 69 cents per 100 pounds on complainant's shipment of car wheels and axles from Marshall, Tex., to Holdup, La., and their subsequently established rate of 27½ cents thereon held unreasonable, and lower rate prescribed for the future. Reparation awarded.

Emerson Bentley for complainant.

E. L. Sargent for Texas & Pacific Railway Company.

Andrews & Hakenyos for Red River & Gulf Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

On March 6, 1908, the Marshall Car Wheel & Foundry Company shipped a carload of car wheels and axles from Marshall, Tex., to Holdup, La., via the lines of the defendants, to the complainant as consignee. The shipment weighed less than 24,000 pounds, and

17 I. C. C. Rep.

charges were assessed upon the basis of the fifth class rate, 69 cents, on a minimum of 24,000 pounds. The prayer of the complaint is for reparation and the establishment of a reasonable rate.

At the time there was in effect between these points, in the reverse direction, a commodity rate of 24 cents per 100 pounds, and the car-wheel company evidently understood that this rate would apply east-bound. Before the shipment started this company learned that there was no commodity rate, and that the class rate of 69 cents must be applied, and thereupon directed the Texas & Pacific not to forward the shipment. Subsequently the Texas & Pacific Company advised the car-wheel company to allow the shipment to go forward at the 69-cent rate, stating that the defendants would establish a rate of 24 cents, and would apply to the Interstate Commerce Commission for leave to adjust this shipment upon that basis. This recommendation was accepted, the shipment was made, and the charges were paid accordingly. The defendants did not establish, and never have established, a rate of 24 cents, but did, instead, establish a rate of 27½ cents, which is now in effect. They applied to the Commission for leave to refund to the complainant on the basis of a 24-cent rate, but this application was denied.

Manifestly, this Commission could not permit a refund applicable to this particular shipment, for the sole purpose of enabling the defendants to make good a rate not in effect when the shipment moved but which they had agreed to protect. Such a practice would do away with the published tariff altogether, if generally applied. But the complainant was entitled to a reasonable rate upon which to make shipment of this property at that time, and it is the duty of this Commission to determine such rate, to apply it to that shipment, and to establish what is now a reasonable rate for the future.

The distance is 178 miles, and there are no unusual difficulties connected with the construction or operation of the lines of the defendants between these points.

Upon a consideration of all the facts, having fully heard the parties, we find that the rate charged was unreasonable and that 24 cents per 100 pounds, with a minimum of 36,000 pounds, would have been a reasonable rate at the time this shipment moved. The complainant has actually paid \$165.60; he ought to have been charged \$86.40, and is therefore entitled to recover \$79.20, with interest.

We are further of the opinion that for the future a rate of 24 cents per 100 pounds, with a minimum of 36,000 pounds, ought not to be exceeded.

An order will be issued in accordance with the above views.

17 L. C. Rep.

No. 2161.
E. B. KIMBERLY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY.

Submitted July 27, 1909. Decided December 13, 1909.

Reparation awarded on shipments of corn from Cincinnati, Ohio, to Morehead, Ky., and rate prescribed for the future.

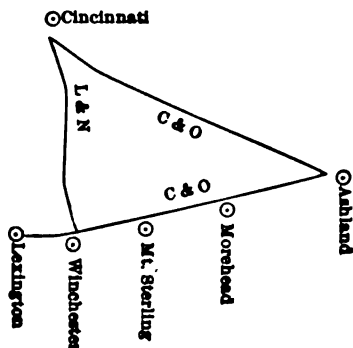
Dinkle & Prichard for complainant.
H. T. Wickham for defendant.

REPORT OF THE COMMISSIONER.

PROUTY, Commissioner:

This complaint attacks the rate on corn from Cincinnati, Ohio, to Morehead, Ky., via the line of the defendant. The prayer is for reparation and also for the establishment of a future rate.

The line of the defendant extends from Cincinnati in a southeasterly direction to Ashland, Ky. From Ashland a branch of the defendant's road runs in a southwesterly direction to Lexington, passing through Morehead, Mount Sterling, and Winchester. The Louisville & Nashville runs almost due south from Cincinnati to Winchester. It will be seen, therefore, that the main line of the defendant to Ashland, the Lexington branch from Ashland, and the main line of the Louisville & Nashville form a rough triangle, of which the Louisville & Nashville is the base, with Ashland at the apex. The outline below shows the location of these various points:



The distance from Cincinnati to Morehead via Ashland is 205 miles, to Mount Sterling 237 miles, to Winchester 252 miles; from Cincinnati to Winchester via the Louisville & Nashville is 96 miles.

The rate of the defendant on corn from Cincinnati to Morehead via Ashland was 15 cents per 100 pounds. The complainant alleges this to be unreasonable for the reason that the defendant has maintained to Mount Sterling a rate of 10 cents per 100 pounds, the haul to Mount Sterling being through Morehead.

The defendant justifies the lower rate to Mount Sterling by competitive conditions. The rate from Cincinnati to Winchester via the Louisville & Nashville is 8 cents, and the local rate from Winchester to Mount Sterling by the line of the defendant is 4 cents. This would produce a combination of 12 cents, but the defendant asserts that wagon competition between Mount Sterling and Winchester has forced it to maintain a rate of 10 cents in order to fully meet the competition at that point.

The fact of the lower rate to Mount Sterling is not conclusive against the rate of 15 cents to the intermediate point, under the circumstances of this case, since competition at Mount Sterling justifies the defendant in naming a lesser rate to the more distant point. The defendant ought not, however, to maintain for the alleged purpose of meeting this competition a rate which is unnecessarily low, and therefore unnecessarily prejudicial to Winchester.

The local rate from Cincinnati to Ashland on corn is $7\frac{1}{2}$ cents, from Ashland to Morehead $6\frac{1}{2}$ cents, producing a combination of 14 cents. The defendant asserts that the rate from Cincinnati to Ashland is forced by water competition and that it may properly, therefore, make a higher rate to Morehead than the local combination on Ashland. The through rate should seldom, if ever, for competitive reasons, exceed the combination. Effective July 19, 1909, the defendant established a rate of 14 cents.

Considering all the facts and circumstances in this case, we are of the opinion that, at the time of the movement involved in this proceeding, 14 cents would have been a reasonable rate from Cincinnati to Morehead, and we are further of the opinion that a rate of 14 cents, with the minimum now in force, ought not to be exceeded for the future.

This complaint was filed on February 15, 1909, and therefore only shipments upon which the freight was paid subsequent to February 15, 1907, can be made the subject of reparation. We find that from June 27, 1907, and January 28, 1908, inclusive, complainant shipped 41,300 bushels of corn from Cincinnati to Morehead, of which 37,300 bushels were aggregated 441,300 pounds, and upon which he paid

charges at the rate of 15 cents per 100 pounds, amounting in all to \$661.95. These charges should have been assessed at 14 cents per 100 pounds, and the complainant should have been required to pay \$617.82. An order of reparation should therefore be issued for \$44.13, the difference between what the complainant has paid and what he should have paid, with interest.

An order will also be issued requiring the maintenance of the future rate.

No. 1319.

STAR GRAIN & LUMBER COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Decided December 7, 1909.

1. The general principles relating to tap lines as announced in *Central Yellow Pine Association v. Vicksburg, Shreveport & Pacific Ry. Co.*, 10 I. C. C. Rep., 193, and in *Central Yellow Pine Association v. Illinois Central R. R. Co.*, 10 I. C. C. Rep., 506, considered and reaffirmed.
2. The Commission can not recognize as common carriers, under the act, lines that do not publish tariffs in lawful form or concur properly in lawful tariffs of other lines in which they are named as parties, or that do not file annual reports and keep their accounts in accordance with the system prescribed by the Commission, or that do not in all other respects comply with the law.
3. But the mere interposition between the lumber mill and the carrier of a paper railroad incorporation that calls itself a common carrier and complies with the act in those respects, but is owned by the mill or its proprietors, does not give legality to the so-called tap-line allowances or meet the requirements of the Commission. As an administrative body the Commission can not stop at the surface of a transportation problem because its form and outward appearance are regular, but must reach the actual situation and examine its real substance and thus be able to enforce the prohibitions as well as the requirements of the act.
4. The underlying principle of the law is to forbid preferences, discriminations, and departures from the published rates; and any allowance or division made to or with a tap line, whether incorporated in form as a common carrier or not, that is owned or controlled, directly or indirectly, by a lumber mill or by its officers or proprietors, and, beyond the logs that it hauls to the mill, has no traffic except such as it may pick up as a mere incident to its effort to serve the mill as an adjunct or plant facility, is a preference and discrimination and an unlawful departure from the published rate.

F. S. Bright and Goulder, Holding & Masten for Tremont Lumber Company and Winn-Parrish Lumber Company.

Worth E. Caylor and William G. Wise for Chicago Lumber & Coal Company et al.

Robert Dunlap and T. J. Norton for the Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

S. W. Moore and Fred H. Wood for The Kansas City Southern Railway Company and Texarkana & Fort Smith Railroad Company.

Samuel H. West for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

James C. Jeffery and Martin L. Clardy for the Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; New Orleans & Northwestern Railway Company; St. Louis, Watkins & Gulf Railway Company; and Little Rock & Hot Springs Western Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; and Vicksburg, Shreveport & Pacific Railroad Company.

Henry Moore and Henry Moore, jr., for Louisiana & Arkansas Railroad Company.

Joe R. Lane and T. J. Gaughan for Thornton & Alexandria Railway Company; Ouachita Valley Railway Company; Freeo Valley Railway Company; and Griffin, Magnolia & Western Railway Company.

Baker, Botts, Parker & Garwood for Moscow, Camden & San Augustine Railway Company, and Houston, Shreveport & Gulf Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This matter comes on again upon a question reserved in our previous report (14 I. C. C. Rep., 364, 372) as to the validity of the allowances made by regular carriers to the so-called "tap lines." We then had before us a petition in which the complainant demanded the reopening of through routes and the reestablishment of joint through rates previously in effect on lumber shipped from mills on the line of the Cotton Belt to local points on the lines of the defendants in Oklahoma, Kansas, Colorado, and Missouri. But the real contest involved in the proceeding was as to the division of the through rates, when reestablished, as between the Cotton Belt for its haul south of Fort Worth, and the Santa Fe for its haul north of that junction. In the order then entered the through rates were reestablished and the divisions as between the two carriers were fixed. It appeared from the record, however, that the Cotton Belt, under the rates formerly in effect, had been paying to the tap lines, from which it was receiving lumber for shipment, from 2 to 6 cents per 100 pounds for hauls by them varying from practically nothing

to 150 or more miles, leaving the Cotton Belt net earnings as low as from 4 to 8 cents for its haul to Fort Worth. In fixing its division of the reestablished through rates at 10 cents per 100 pounds we took occasion to say that it was not to be understood as including any allowances to the so-called "tap lines," they not being parties to the record.

In reserving the question of allowances for further investigation, we said (p. 371) that—

even if they were parties to the complaint, the record contains no testimony that would enable us intelligently to extend to them any portion of this division for the haul south of Fort Worth. In addition it appears that most if not all of these tap lines are owned by the mills which they serve. And we are not willing without further information to give any recognition to their right to receive from the regular carriers any allowance out of the published rates for hauling logs from the forests to the mills by which the tap lines are owned. The standard lines receive the sawed lumber at the mills and haul it to consuming destinations. For this service they are entitled to their published rates. But on this record we are not satisfied of their right to share the rates with the tap or tram lines for their alleged service in connection with the through transportation. It is the purpose of the Commission to make an investigation of these tap lines and the character of the transportation which they conduct. The case will be held open for that purpose, and all questions as to their right to participate in these rates will be reserved for further consideration. For the present we hold that no such right has been shown.

Accordingly the matter was set for further hearing at New Orleans, and much additional testimony was taken. But the record as a whole did not seem to throw all the light that was desirable or could be had upon a question of such importance. The Commission in the meantime had entered upon a more or less exhaustive investigation of its own, which, although not yet concluded, has arrived at a point that enables us, considering it together with the general record in this proceeding, to form definite conclusions, which we desire now to announce.

It may be well, however, first to make some reference to the previous attitude of the Commission on this question as it is to be gathered from adjudicated cases. It was first presented for our consideration in *Central Yellow Pine Asso. v. Vicksburg, Shreveport & Pacific Ry. Co.*, 10 I. C. C. Rep., 193, where the history of the practice of making allowances to tap lines as well as the results flowing from it were considered at some length. The opinion of the Commission speaks fully for itself and therefore need not be examined here in great detail. It will suffice to say that the general principles there announced, so far from being now subject to modification, have been strengthened by the progress of time and with the further knowledge that has been acquired in relation to the matter with which it deals. It was there pointed out that, although

in some cases the tap line was a mere department of the mill and in others was owned and operated by a separate copartnership composed of the same individuals that owned the mill, and in still other cases by a chartered corporation, the stock of which was owned by the mill company or its proprietors, in practically all cases the allowances received from the regular carriers finally, if not directly, inured to the benefit of the mill company. And we said that the substance of the transaction could not be altered by merely changing the name of the party to whom payment was made and that such a course would be nothing but a transparent device for securing an illegal concession. It was contended in the case that a carrier, in order to build up its traffic, might agree with a lumber company, as an inducement to it to enter forests that might otherwise not be cut, to bear the expense of bringing the logs to the mill, so long as the allowance did not exceed the actual cost of that service. But the opinion in the case points out that if the right to make an allowance to compensate the mill owner for the expense of bringing the logs to his mill be once admitted, it becomes immaterial by what means the logs reach the mill, whether on iron rails behind a steam locomotive or on wood rails with mules for the motive power or on wagons drawn there by teams or by being floated to the mill by water. And consequently we said that the rates on lumber from stations on their lines must be observed by carriers and applied to all shippers alike, and that they had no lawful right to return a portion of the rate to the mill owners, because the logs out of which the lumber was manufactured had come to the mills by steam railroad or horse railroad or by wagon or by any other means of conveyance. The right to make allowances in order to compensate the mill owner for the cost of bringing his logs to his mill was expressly denied; on such grounds, we said, it could no more be justified than could an allowance to him for bringing his lumber to the carrier by wagon. The conclusion reached and there announced goes no further than the declaration of the principle that the hauling of the logs to the mill and the lumber from the mill might be treated as a through movement, with the privilege of manufacturing the logs into lumber in transit, and that a division of the through rate might be allowed, provided the carrier that performed that service "*is a common carrier by rail,*" that subjects itself to the provisions of the act and complies with its requirements. But we coupled that guarded statement with the further statement that a division even under such circumstances would be an extreme application of the milling-in-transit privilege.

It is now urged in support of the continuance of the tap-line allowances that what was said in that proceeding fully justified lumber

interests in believing that the Commission intended to be understood as giving its sanction to such allowances when paid to "a common carrier," and that a number of tap lines so incorporated were constructed or enlarged under that belief. Whatever may be the fact in that regard we can assume no responsibility for what was done by mill owners under such an interpretation of our ruling in that case. Shortly after that complaint was disposed of the question was again before us in *Central Yellow Pine Asso. v. Illinois Central R. R. Co.*, 10 I. C. C. Rep., 505, and again had our careful consideration. The Commission there took occasion to explain and interpret its opinion in the previous case, so far as explanation or interpretation was necessary, and gave what must be regarded by all as a definite notice to lumbering interests that the mere interposition, between the mill owner and the carrier, of a paper corporation owned by the mill or its proprietors and calling itself a common carrier would not meet our requirements or give legality to such allowances; and that allowances to tap lines that were but the private property of the mill owners, used for hauling logs to their mills and not, in fact as well as in form, common carriers for the public, were unlawful and would be so regarded by us.

It was said during the hearing at New Orleans that after the announcement of our report in *Central Yellow Pine Asso. v. Vicksburg, Shreveport & Pacific Ry. Co.*, *supra*, a number of tap lines, already constructed and in operation as part of the general machinery and as one of the regular facilities used in lumbering enterprises, were incorporated as common carriers under special or general state laws, upon the belief that this course would satisfy all the conditions suggested in that proceeding, regardless of the actual character of the traffic carried by the logging roads, thus nominally separated from direct ownership by the mills but retained in substance as a plant facility by a direct ownership or control of the stock of the incorporated line. The question now before us on this record is whether such a state of affairs satisfies the law and removes all objection to the allowances now being made.

Few, if any, of the logging roads or so-called tap lines, however much they have endeavored to give themselves the appearance of being common carriers, are in fact fairly to be considered as common carriers within the purview of the act. In the investigation made by the Commission on its own initiative in aid of this record and other matters pending before us the facts in relation to some 740 tap lines in various parts of the country were gathered, either through responses made to our inquiries in the form of circular letters and otherwise, or through personal examinations made in the field by our examiners. The information thus acquired may be assumed to be generally accurate. It shows that of the 740 tap lines so investi-

gated 183 have gone through the form of being incorporated as railroads; but 65 file with this Commission tariffs applicable to interstate movements; only 50 tap lines concur in the interstate tariffs of regular carriers; 621 tap lines neither file tariffs of their own nor concur in tariffs of other lines covering interstate shipments; and but 92 file annual reports with this Commission as required by law of common carriers engaged in interstate commerce. In the case of 498 of these tap lines our investigations disclose that the entire traffic is supplied by the lumber interests by which, in one form or another, they are owned and controlled; but 33 lines receive as much as 20 per cent of their total tonnage from the public or industries other than the lumber mills by which they are directly or indirectly owned and controlled; and 200 tap lines are reported as receiving 80 per cent or more of their total tonnage from the lumber interests that control or own them, and in the majority of these instances our reports indicate that as much as 90 per cent of the traffic moved is lumber received from the mills by which they are owned or controlled.

Among the tap lines so investigated there are doubtless some that make an effort to comply in form with all the requirements of the act. They may publish tariffs in conformity with its provisions and with the regulations of the Commission, or they may be named properly as parties to, and may properly concur in, lawful tariffs published by the regular lines. A typical tariff is that of the Cotton Belt entitled "Through Rates from Connecting Lines (commonly called Tap Lines)." Under this title rates on lumber are named from the junctions of the tap lines with the Cotton Belt to various destinations. But an effort is made to carry the rates back to the living tree in the forest, under a note which provides that "The through rates herein provided cover the carriage of the log to the mill and the lumber from the mill." Under this note the tap line is given such an allowance out of the rate as the Cotton Belt may wish to pay in order to secure the traffic, or may be compelled to pay in cases where the tap line has been pushed through the forest to a junction with another regular line which competes for the traffic by bidding up the amount of the allowance. In the Cotton Belt tariff a number of tap lines are named as parties, and concurrences by them have been filed. What allowance each gets does not appear. Doubtless some one or more of them keep their accounts in accordance with the uniform system of accounts prescribed by this Commission for carriers participating in interstate commerce. And certainly we can not recognize as common carriers, under the act, lines that do not publish tariffs in lawful form, or concur properly in lawful tariffs of other lines in which they are named as parties, or that do not file annual reports with this Commission and keep their accounts in accordance

with the system prescribed by us. As heretofore stated, we can not recognize a tap line as a common carrier under this act, and as entitled either to allowances or divisions of through rates, that does not in all respects comply with the law. And we hold that allowances or divisions accorded by regular carriers to the so-called tap lines, whether incorporated or not, which do not comply with the requirements of the law in the respects referred to, are unlawful.

But assuming a case where all these matters have been carefully guarded by tariffs properly constructed and a system of accounts conforming to our regulations, must we accept that tap line as a common carrier merely because it calls itself a common carrier, when in fact its so-called line is a mere logging road extending from the mill that really owns it into the forest also owned by the mill, with no public to serve or no traffic other than the logs that have been cut by the mill and are to be manufactured by it into lumber? In other words, as an administrative body, are we to be stopped at the surface of a transportation problem because its form and outward appearance are regular and not look into and examine its real substance?

It is sometimes said that the essential characteristic of a common carrier is that it holds itself out as such to the world, and in a certain class of cases some such test has been applied; and where there is a shipping world to which it may hold itself out as a common carrier and which it may serve in that capacity the test suggested may be a proper one. But when we are dealing with a law the underlying principle of which is to forbid preferences, discriminations, and concessions from the legal rates, and when there is no shipping public which the alleged common carrier may serve, and when it is owned or controlled directly or indirectly by a particular industry which needs it as a plant facility and can not successfully conduct its business without it, and when its revenues accrue directly or indirectly to that industry, it leaves this Commission in rather an impotent condition if it must accept the mere form as controlling, and may not look into the actual situation and thus be able to enforce the prohibitions of the act against such preferences and discriminations and departures from lawfully published rates. Some such state of facts was developed in *Taenzer & Co. v. C., R. I. & P. Ry. Co.*, 170 Fed. Rep., 240. Shortly before that proceeding was commenced the logging road in behalf of which the case was instituted was incorporated as a common carrier so that it stood before the court with all the outward form of a common carrier possessed by the great majority of the so-called tap lines that are now before us on this record. But the court said that these considerations—

can not overcome the fact which clearly stands out according to the proofs given or offered that the so-called railroad was intended by them, by the railroad company and the lumber company, merely as a spur to the mill for the

purpose of enabling the lumber company, not as a carrier but as a shipper, to transport its forest products over the line of the Choctaw Railroad; that throughout the lumber company's relation to the railroad company was in fact that of shipper. * * * The terms used and the provisions relied upon as establishing the status of common carriers can not prevail against the consideration that this lumber and logging road had no rolling stock suitable for any purpose except logging; that there was in the neighborhood no cotton or other merchandise to ship, and no inhabitants to serve as carrier, either in the relation of passengers, shippers, or consignees.

Upon these facts the court had no difficulty in holding that the tap line "was not a common carrier, but was a mere spur extending through the timber to the mill of the plaintiff as a mere adjunct to its lumber business."

Without attempting in this report to enter upon any examination of the adjudicated cases or extended analysis of the record before us, and without endeavoring at this time to classify the tap lines in the region involved in this inquiry, we hold that any allowance or division made to or with a tap line that is owned or controlled, directly or indirectly, by the lumber mill or by its officers or proprietors and that has no traffic beyond the logs that it hauls to the mill, except such as it may pick up as a mere incident to its efforts to serve the mill as an adjunct or plant facility, is an unlawful departure from the published rates. It is understood that the principal defendant, and perhaps others of the defendants, in obedience to the intimations in our previous report, are not now paying such allowances, and many carriers that are paying them or making divisions with tap lines are not parties to this proceeding. We shall, therefore, enter no order herein, but shall content ourselves merely with the announcement of the general conclusions at which we have arrived. We shall look to the carriers that are paying such allowances immediately to make their arrangements to discontinue the practice. It will be well to add that we are aware of the fact that the discontinuance of allowances to or divisions with tap lines under this ruling will leave the carriers with substantially larger revenues on their lumber traffic from these regions than they have heretofore enjoyed. We shall not prejudice any controversy over rates that may follow upon the withdrawal of these allowances by assuming that the present rates with the allowances discontinued will be unreasonable. But it seems well to suggest that the carriers and shippers ought promptly to confer, so that the entire situation may be readjusted on a basis that will eliminate the unlawful practice here referred to and will give the shippers transportation on a reasonable basis.

PROUTY, Commissioner:

The purpose of this complaint was to obtain a reestablishment of certain through routes and joint rates which had been discontinued

by the Atchison, Topeka & Santa Fe Railway Company. The matter of tap-line allowances was brought into the case by that defendant. I have not had time to examine the record in detail, but the cursory reading which I have been able to give it fails to disclose any instance in which a shipper is complaining of discrimination. This inquiry has not therefore grown out of complaints of lumbermen, but is apparently being fostered by the railways in the hope that the Commission may make some declaration which can be laid hold upon by these carriers to justify them in cutting off allowances which otherwise they would hesitate to cancel. Under these circumstances the Commission should be very cautious not to promulgate any opinion which can be improperly applied, and for that reason I desire to define my own attitude toward this question.

In *Central Yellow Pine Association v. Vicksburg, Shreveport & Pacific Ry. Co.*, 10 I. C. C. Rep., 193, this tap-line question was presented upon formal complaint. The complainants were lumber men doing business east of the Mississippi River, and their complaint was that while carriers in that territory did not allow tap-line divisions, the defendants who operated west of the Mississippi River did, and that this was a discrimination against them. In that proceeding the Commission ascertained in the case of each trunk-line defendant the number of tap lines to which allowances were made and the general characteristics of each one of these tap lines. As a result we announced the opinion that such divisions might properly be paid in case the lines receiving them were common carriers and tariffs were properly established. That being so, we were of the opinion that the allowance, in so far as it could be properly made, was a part of the rate, and since lines west of the river were independent of those east of the river, we were further of the opinion that discrimination could not be predicated upon the fact that a lower rate was maintained, and the complaint was dismissed.

While it was declared that the payments were unlawful in all cases as they were at that time being made, the effect of the decision was to hold that under proper tariff provision such divisions might in some cases be lawfully allowed.

In 1903 rates from lumber-producing sections both east and west of the Mississippi River to northern destinations were advanced 2 cents per 100 pounds. Complaints were brought by lumber interests east of the river attacking this advance, and upon hearing these complaints the Commission condemned the advance. The opinion of the Commission was sustained by the Supreme Court of the United States and carriers leading from the long-leaf pine regions east of the Mississippi River were compelled to reduce their rates 2 cents per 100 pounds and to pay reparation on account of past shipments.

When carriers to the east of the river were finally compelled to reduce their rates, carriers to the west declined to take similar action and complaint was thereupon brought before this Commission, asking that the rates be reduced.

In the defense of this complaint it was earnestly urged that the Commission had held in the tap-line case above referred to that the tap-line allowance was a division of the through rate which might properly be allowed; that the effect of this was to reduce the revenue of carriers west of the river, as compared with carriers east of the river; that these allowances would on the average amount to 2 cents per 100 pounds, so that in reality rates from the west of the river were then as low as those from the east.

The Commission declined to reduce those rates, and I certainly, in voting for that conclusion, was strongly influenced by the arguments above stated. To cut off to-day these tap-line allowances would be in effect to advance lumber rates from that whole section by probably 2 cents per 100 pounds, although we have just approved one advance of 2 cents largely because tap-line allowances were made.

The Hepburn amendment provides that no railroad shall transport in interstate commerce any commodity which it owns or in which it is directly or indirectly interested "other than timber and the manufactured products thereof." This exception has no application except to so-called tap lines or lumber railroads, which exist not only in the southwest but to an extent in other parts of the United States. Congress thereby recognized that in the conduct of the lumber business these railroads must be built, and said that in such case alone the owner of the railroad and the owner of the property might be identical. This must have been because it was made to appear to Congress that the public interest required an exception of that kind.

All this is no reason why lumbermen should be allowed a rebate under the guise of a division, nor why discrimination should be practiced through the medium of the so-called "tap-line allowance," but it does indicate that the construction of railroads, the principal part of whose service is to transport lumber, by the individuals who own the lumber which is to be transported, is a public necessity and a public benefit and should lead us to exercise great care in dealing with this question.

In order to define my own attitude I must refer briefly to the general situation.

Many railroads, now called main-line railroads, were originally, so far at least as their extensions in this southwestern territory are concerned, built almost exclusively as lumber railroads. Their only

traffic at first was the lumber from the mill, the logs to the mill, and the few supplies which were required in the conduct of the lumber business.

In process of time the timber adjacent to the railroad has been cut off. It is no longer possible to bring either the log to the mill at the railroad or the lumber from the mill located at a distance from the railroad by wagon or by any other agency than a railroad. If this lumber is to be got to market a railroad must be constructed and operated by some one. This basic condition must not be overlooked.

Here is a tract of forest 25 miles distant from the line of some one of these defendants. The lumber in that forest can not be marketed without the construction of a railroad. A lumber company, owning the land, proposes to the main-line railroad to construct a mill for the purpose of cutting out that lumber, provided a branch railroad can be constructed from its vicinity to the main line. Thereupon the railroad builds a branch to this mill. At the outset substantially all the traffic which it has is the lumber produced by that one mill. It takes in the supplies consumed by the mill. It takes out some small amount of freight for people living along the line of the branch, but the purpose of the railroad and the bulk of its traffic is to handle the lumber from that mill.

In process of time this road is extended, other mills are built, the forest is converted into farm land, and villages grow up. The railroad develops with the development of the country.

Such a railroad is in no sense analogous to a plant facility. It is not a thing by means of which the lumber company conducts its business—by which cars are moved from point to point about its mill in the course of its operation. It is not a mere logging road whose sole business is to bring logs from the land of the lumber company to the mill. It is not a private switch connection between the mill and the main line.

Can there be any doubt that the legislature of the state, with all the facts before it, would grant a charter for the construction of this railroad between these points, giving the right of eminent domain, or that a court would sanction the taking of private property under that charter? Can it be doubted that the road, when constructed and in operation, is in fact a common carrier, although the greater portion of its business at first may be the transportation of the lumber from this mill to the main line?

If this road is a common carrier, either as a branch of the main line or as an independent line, plainly the main-line railroad may apply to this mill the blanket rate which is given to that whole country.

It may be that the main-line railroad, while anxious for the traffic, does not care, or is not able, to construct this branch. For the purpose of inducing its construction and thereby obtaining the traffic which will result it proposes to a private individual to form a company and construct the railroad, and as an inducement it offers to apply the blanket rate to the terminus of the road when constructed and to allow this railroad a division out of the through rate. Can there be any question as to the legality of this transaction, assuming always that it is in good faith?

What usually happens is this: The main-line railroad is not willing to construct the branch line and no individual can be found who will advance money to build that line. If built at all it must be constructed through the resources of the same people who are to furnish it with its principal traffic when built. The same individuals who own the lumber mill take, therefore, the stock of the railroad company. Sometimes this stock is owned by the lumber company itself; sometimes the same persons who are stockholders in the lumber company become stockholders in the railroad company, either in the same proportion or in different proportions. Sometimes the railroad stock is partly owned by the lumber company and partly by people not connected with that company.

It is suggested that these divisions are illegal because of the interest of the lumber company or its owners in the railroad company. A payment to the railroad company is virtually a payment to the lumber company, and is therefore in effect a rebate to that company from the published rate.

It can not be denied that if the lumber company owns all the capital stock of the railroad company, any payment to the railroad company inures to the benefit of the lumber company, and that if it owns a portion of the stock such payment inures to the benefit of that company in proportion to the amount of stock which it owns. This does not, to my mind, render the payment improper.

Let it be carefully noted that the railroad company is a common carrier. The service which it performs and for which it is paid is the service of a common carrier. The payment is in consideration of a public service, and if this is true it should make no difference whether the means by which that service is rendered are provided by the main-line railroad or by independent individuals, or in whole or in part by the same persons who own the lumber which is transported. If the railroad is in fact a common carrier, if the building of that railroad is for the public interest, if the country can not be developed and the lumber brought to market unless that railroad is built and operated, then its building and its operation is not only a proper thing, but a commendable thing, and the giving of the division, which

stimulates the building and the operation of the road, is proper and commendable. That this was the opinion of Congress appears from its action in excepting lumber from other commodities, as already noted.

But whatever the public policy of the matter may be, I am unable to see how the identity of stock ownership in the lumber company and the railroad company can, of itself, render the giving of this division unlawful. There is no legal identity between the ownership of the railroad and the lumber company. The lumber company could not be sued upon a contract of the railroad, nor for a misfeasance of the railroad. To attempt to say that the business of a stockholder is to be regarded by a railroad as different from the same traffic when offered by a person not a stockholder leads to all sorts of absurdities.

In investigating the matter of industrial railroads, *In the Matter of Divisions of Joint Rates*, 10 I. C. C. Rep., 385, 389, the Commission found one railroad the stock of which was entirely owned by several industries along its line. One of these industries owned a majority of the stock, the balance being held by the other industries in various amounts. Suppose, now, that this railroad was a common carrier which would otherwise be entitled to receive a division upon through business handled by it on joint rates, to what extent can this right be influenced by the fact that the stockholders of the railroad are the industries which furnish that railroad with the greater part of its traffic? Is the division unlawful in case of the industry which owns a majority of the stock and lawful with respect to the other industries, or is it unlawful as to all?

Great copper-mining enterprises have been developed in the territory of Arizona and their existence has rendered the construction of a railroad necessary. Such a railroad has been built by the owners of those properties. The managers of the smelters are the officers and managers of the railway. Will it be said that when Phelps, Dodge & Company transport a carload of coke from Chicago to Bisbee, upon a joint through rate, the El Paso & Southwestern Railroad Company can not properly be allowed a division of that rate?

Without citing other authorities, the recent decision of the Supreme Court of the United States upon the commodities clause would seem to end debate upon this subject. *United States v. Delaware & Hudson Co.*, 213 U. S., 366. The act, as amended in 1906, provides that no railroad company shall transport property "which it may own in whole or in part, or in which it may have any interest direct or indirect." The court held that a railroad company had no interest, direct or indirect, in coal mined by a coal company whose capital stock was entirely owned by the railroad company.

Does not such a conclusion open the door to abuses which this Commission, under the act to regulate commerce, has no power to prevent? May not a lumber company incorporate its railroad, file its tariff, and thereby obtain what is in effect a concession from the published rate?

This division, in my opinion, is only proper when granted to a common carrier. The incorporation of a company does not make the railroad a common carrier; nor does the filing of a tariff. It must perform the duties of a common carrier in fact. If it does, it ought to be compensated, and may properly be compensated, and no wrong is done anyone by allowing it a reasonable return for the service rendered. It might happen, however, that the division allowed one of these logging roads, which was in fact a common carrier, was excessive, and that the purpose of making the division excessive was to give the lumber company a virtual preference. How can a transaction of that kind be prevented?

In the *Matter of Divisions of Joint Rates, supra*, the Commission had before it the Illinois Northern Railroad Company. The stock of this company was entirely owned by the International Harvester Company. The railroad had been partly built and partly bought by that company. It connected the works of the harvester company and many other industries with trunk-line railways leading from Chicago, and it handled traffic to and from these various industries under joint rates, of which a most extravagant division was allowed the Illinois Northern Company.

It could not be successfully denied in that case that the Illinois Northern was a common carrier performing a service essential to the public. It was plain that the divisions allowed were excessive, and it seemed equally plain to the Commission that these divisions were granted the Illinois Northern not by reason of its strategic position as a railroad, but because the International Harvester Company, which owned the railroad, had an enormous traffic for sale to the various connecting lines. In that case we held that the allowance of these divisions was a palpable "device" by which a rebate was paid to the harvester company. We stated that unless the divisions were reduced to a sum which the Commission fixed as reasonable prosecutions would be undertaken. They were in fact so reduced.

In the original tap-line case the Commission had before it a statement of the divisions allowed all these logging roads, and in no instance could that division be termed excessive. The record now before us indicates that such may not to-day be the fact. If there be now any case in which a division is allowed beyond what is reasonable under all the circumstances, and if that division is intended as a preference to the lumber company which owns the road, then, in my

opinion, both the main-line railroad which pays and the lumber company which receives can be prosecuted, and should be.

In order to secure a conviction in such case, it would be necessary to show bad faith, and the Commission realized from the facts developed by investigations like the one referred to that many cases must arise where the division was in fact excessive, but where it would be impossible to show the evil intent. For the purpose of meeting this difficulty it suggested to Congress certain legislation, which finally took form in the next to the last paragraph of section 15 of the present act, by which it is provided that if the owner of property transported directly or indirectly renders any service connected with the transportation, the compensation for such service shall be no more than is just and reasonable, and that the Commission may fix the maximum amount of such compensation. It was believed that this provision would enable the Commission to deal with cases like that of the Illinois Northern Railroad by fixing the division to which that railroad should be entitled. While the decision of the Supreme Court in the commodities case to which reference is above made throws doubt upon the availability of this provision, I still think that the court would uphold such an application of it, and that, at all events, the attempt should be made.

Many of these so-called "tap lines" have developed from private logging roads, having none of the incidents of a common carrier, into railroads proper with every incident of a common carrier. A railroad whose only business twenty years ago was the hauling of logs a few miles to the mill is to-day a hundred miles long and engaged in the transportation of passengers, of express, and of the mails, as well as of logs and of lumber. The difficulty of determining where the private carrier leaves off and where the common carrier begins is what lends embarrassment to the problem before us. Manifestly, a lumber company can not endue its railroad with the habiliments of a common carrier by taking out an act of incorporation, nor by the filing of a tariff, nor by the making of a statistical report to this Commission. The fact that the legislature of the state has granted an act of incorporation with the right of eminent domain, especially if that right has been exercised in the construction of the road, would be significant; but after all it is in each case a question of fact, depending upon the circumstances under which the individual road has been constructed and is being operated. In the original case no attempt was made to define a common carrier, and I do not think it is wise to make that attempt now.

The opinion of the Commission indicates a belief that none of these tap lines are bona fide common carriers. Such is not my impression.

I have not had opportunity to examine, even in a cursory way, the entire situation, but have obtained a statement with respect to the Santa Fe system and the St. Louis & San Francisco.

Up to 1908 divisions were allowed by the Santa Fe to 15 tap lines, but these seem to have been entirely discontinued during that year. The St. Louis & San Francisco apparently makes these divisions with 16 tap lines. Of these, 5 are not mentioned in the Official Guide, 3 profess to do only a freight business, while 8 do both a passenger and freight business. These 8 vary in length from 5 miles to 100 miles. It does not seem to me that a railroad must necessarily do a passenger business in order to be entitled to these divisions as a common carrier; but it does seem probable that where a railroad maintains a bona fide passenger schedule it is a common carrier.

I am inclined to think that a point has been reached where this matter must be dealt with in detail. We have from the tariffs a list of the lines with which divisions are made. These railroads probably make statistical reports to the Commission. In the original case we required a statement in the tariff of the amount of these divisions; but this requirement has not been generally complied with in the past and is in no case complied with to-day. If we have no legal authority to make that requirement, we certainly can direct these carriers to furnish us for our use a statement of these divisions, and should do so.

If, with this information before us, there seems reason to believe that divisions are being improperly allowed in any instance, the main line and the tap line should be cited before the Commission, an investigation should be had, and an order made in cases requiring one. This method is not unduly burdensome to the Commission, preserves the rights of all parties, and secures a prompt enforcement of the law.

No. 2030.

F. H. BASCOM COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted May 5, 1909. Decided December 7, 1909.

1. The defendant, while maintaining an open fifth class rate of 30 cents per 100 pounds from El Paso back to local points on its line, also publishes and maintains a special rate of 10 cents per 100 pounds applicable only to merchandise that has come into El Paso, at any time in the past, over its own lines; *Held*, That the rate is unlawful and discriminatory and is not justified or excused by the fact that El Paso is a highly competitive point.
2. Defendant's contention that the 10-cent rate is a proportional rate is not sustained. The rate is a mere concession in the outbound rate and a device to force traffic to El Paso over its own lines by denying its use to merchandise that has come into that point over competing lines.

Rufus B. Daniel for complainant.

Robert Dunlap, T. J. Norton and A. A. Hurd for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The question presented for our examination in this proceeding is as to the validity of a rate of 10 cents per 100 pounds published by the defendant for the transportation of mixed shipments of barbed wire, wire nails, wire staples, and wire fencing, in carloads, from El Paso, in the state of Texas, to Las Cruces, in the territory of New Mexico, the rate, under the express terms of the tariff, being applicable only on merchandise of that character that has come into El Paso over the lines of the defendant. At the same time the defendant publishes an open fifth class rate of 30 cents per 100 pounds on mixed-carload shipments of those commodities from El Paso to Las Cruces and applies it to all shipments of such articles, in carloads, that have reached El Paso over competing lines. There is no restriction in point of time in the application of the 10-cent rate; all

that is required to entitle the shipper to demand that rate to Las Cruces is to show that his merchandise at some time came into El Paso over the lines of the defendant.

On January 8, 1907, a mixed carload of wire fencing, nails, and other commodities of that nature was shipped to the complainant over what we shall here refer to as the Frisco route from De Kalb, in the state of Illinois, to Las Cruces. As a matter of fact the car was billed to El Paso, but the shipping papers indicated that it was intended to go through to Las Cruces. Instead of forwarding its merchandise directly to Las Cruces over the rails of the defendant, which then published a through rate to that point of 92 cents per 100 pounds, the consignor, the American Steel & Wire Company, doubtless for the purpose of enabling the consignee to take advantage of what was supposed to be a lower combination of rates based on El Paso, forwarded the shipment over the Frisco to the latter point, and there had it rebilled over the defendant's line to Las Cruces, apparently by the local railroad agent at El Paso. In other words, the shipment when delivered to the initial carrier at De Kalb was intended as a through shipment to Las Cruces, where the complainant seems to be engaged in business; and it reached that point wholly through the agency of the carriers, no agent of the consignor or consignee appearing at El Paso either to take possession of the shipment or to rebill it to Las Cruces.

Apparently the charges to El Paso were prepaid at De Kalb. The lawful rate between those points over all lines was 64 cents per 100 pounds. The consignor being advised, as we assume, of the 10-cent rate over the defendant's line from El Paso to Las Cruces, apparently hoped to get the advantage of it by using the Frisco route to El Paso, and thus be able to deliver its merchandise to the consignee at Las Cruces at a total charge for the through transportation of 74 cents per 100 pounds, as against the through rate over the defendant's line of 92 cents per 100 pounds. But upon arrival of the car at Las Cruces the defendant, instead of applying the 10-cent rate, which, under the specific terms of its tariff, was not applicable on commodities of this character reaching El Paso by the Frisco or over any other of the several available routes from De Kalb, demanded the rate of 30 cents per 100 pounds. The charges for the through movement were therefore collected on the basis of 94 cents.

In its petition the consignee alleges that the 30-cent rate is excessive, and it demands the benefit of the defendant's 10-cent rate to which reference has been made.

In explanation of its two rates for the same service, maintained at the same time in its published tariffs, the defendant contends that it has the right to protect its "legitimate revenues" by restricting the

lower 10-cent rate to Las Cruces to shipments that have come into El Paso over its lines. It points out that shipments may move the entire distance over its lines from Chicago and other points to El Paso; that the Frisco and its connections also have a through line between those points and that there are several other direct routes over the lines of connecting carriers; that El Paso, although the more distant of the gateways into Mexico, takes the same rates that are enjoyed by the less distant gateways; that the rates to El Paso are therefore very low rates; and that these competitive conditions at El Paso fully justify it in maintaining a rate adjustment that will prevent shippers from using competing lines into El Paso on the low rates to that point and then shipping over its lines locally from El Paso to Las Cruces at a total through charge approximating its own through rates to the latter point.

On the brief filed on behalf of the defendant the 30-cent rate is spoken of as its "regular local rate" from El Paso to Las Cruces on fifth class articles; and, although the distance is only 44 miles, the rate is justified on the ground that the paucity of traffic between those two points makes any rate within reason a proper rate. The 10-cent rate is referred to as a "proportional rate," and is said to be similar to proportional rates recognized by this Commission and railway interests all over the country. It is contended that unless the defendant maintains a rate from El Paso to Las Cruces that is lower on merchandise coming into El Paso over its lines than on merchandise coming into El Paso over other lines, it will be deprived of its revenue for the haul from Chicago to El Paso. On that ground it is insisted that the defendant ought to be allowed to continue to maintain the so-called proportional rate with the limitation attached to it now appearing in its published tariffs.

We do not understand that the 10-cent rate of the defendant is a proportional rate or, as counsel assert, that such a rate has at any time been recognized by the Commission or by railway officials generally throughout the country as a proportional rate. A proportional rate is nothing more or less than a separately established rate, as that phrase is used in section 6 of the amended act, applicable to through transportation. And it has not been understood either by the Commission, or by others so far as we are informed, that a separately established rate can be other than an open rate available to all. The separately established or proportional rate is simply one way of making up the through charges between two points; but while we have made no criticism and, as at present advised, see no grounds for any criticism of proportional rates applicable only to through movements from a defined territory or group of points, we have never recognized as valid and, as at present advised, see no grounds upon

which we could recognize as valid a proportional rate limited to shipments that come into the proportional rate point over the lines of a particular carrier. Proportional rates limited to through movements from defined territory, or from a group of points, seem to form a proper basis for making up through charges for transportation from those points and that territory. But a proportional rate, the use of which is limited to shipments over a particular line, would appear to be a rate that discriminates against shippers over another line.

But the 10-cent rate as published is not a proportional rate. It is simply a local rate with an unlawful limitation attached to its use. It is intended to apply not as an extension or in any way as a part of a contract of transportation upon which goods in the indefinite past may have come into El Paso, but simply as a special basis for assessing charges on a new contract for a local movement to Las Cruces; and nothing can be clearer than that any basis for making charges for a new and independent local movement to Las Cruces must be available alike to all shippers regardless of any previous act of transportation. We regard the contention as novel as it seems to be without merit, that a carrier may maintain a rate adjustment between two points that permits a wholesale merchant to pick out of his stock, regardless of the length of time the goods have been in his possession, a carload of merchandise and enter into a contract with the defendant for its transportation from El Paso to Las Cruces at a rate of 10 cents per 100 pounds, because those particular goods were received by him over that line, although if he picked out other goods of precisely the same nature that had come into the distributing point over another line he would be required to pay a 30-cent rate, as would also a competing merchant whose goods had reached El Paso over another line.

We see no grounds upon which the 10-cent rate as published in the defendant's tariff may be properly sanctioned. In its results it is simply a concession in the outbound rate, or a restriction upon its use, that was intended by the defendant as a means of buying or forcing inbound traffic over its own rails to El Paso. There are transit, reconsignment, and diversion privileges of varying character in the published tariffs of interstate carriers which permit of the application of the balance of the through rate to the ultimate destination under certain defined conditions, but the rate in question is in no sense such a rate. It is merely a device on the part of the defendant to force distributing merchants at El Paso to use its line to that point by offering them for subsequent transportation to Las Cruces, that has no relation either in point of time or otherwise to the original movement into El Paso, a rate that it denies to other wholesale merchants whose

wares have come into El Paso over competing lines. We know of no justification for such a rate and regard it as unlawful and discriminatory. Although it involves a state of facts quite different to those disclosed here the case of *Alabama, etc., Ry. Co. v. Mississippi R. R. Commission*, 203 U. S., 496, is not without interest in this connection.

As we are compelled to condemn the 10-cent rate as unlawful, we must decline to give the complainant the benefit of it on the shipment in question. Moreover as the fifth class rate of 30 cents per 100 pounds, on mixed carload shipments of barbed wire, wire nails, staples, and wire fencing to Las Cruces, seems to be adjusted in definite relation to carload rates on those articles from El Paso to all the local points on the defendant's line, it is clear that any order by the Commission modifying that rate for the future would directly affect the rates to all such points. We are not inclined, on this record at least, to enter such an order; but the defendant must at once cancel the 10-cent rate or voluntarily make it an open local rate to Las Cruces by removing the restriction now attached to it; and unless this is done promptly and the Commission so advised, we shall be compelled to conclude that the defendant regards the 10-cent rate as a reasonable rate for its service in transporting mixed carloads of these commodities to Las Cruces and shall enter an order requiring it to maintain that rate for the future. The record will be held open pending advices from the defendant in that regard.

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Nos. 2697 and 2711.

PABST BREWING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Nos. 2710, 2726, and 2728.

JOSEPH SCHLITZ BREWING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

No. 2734.

PABST BREWING COMPANY

v.

CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted July 12-August 6, 1909. Decided December 14, 1909.

1. It is not the province of the Commission to order reparation for the exaction of an alleged unreasonable charge merely upon a showing that the carrier is willing to honor the claim.
2. An award of reparation can be predicated only upon an affirmative finding that the rate exacted was in fact excessive.
3. The Commission will inquire with particular care into the merits of complaints which are presented by shippers and carriers jointly lest unlawful preferences be unwittingly sanctioned.
4. Rate assessed upon shipments of empty beer packages from Omaha, Nebr., and Kansas City, Mo., to Milwaukee, Wis., not found unreasonable. Complaint dismissed.

Charles Zielke for Pabst Brewing Company.

C. J. Bertschy for Joseph Schlitz Brewing Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

Winston, Payne, Strawn & Shaw for Chicago & Alton Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

These complaints present a single issue and may properly be disposed of in one report.

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On various dates between September 2, 1908, and February 25, 1909, complainants shipped 51 carloads of empty beer packages from Omaha, Nebr., to Milwaukee, Wis., and 168 carloads from Kansas City, Mo., to the same destination via the lines of the defendant carriers, charges being assessed and collected at the rate of 16 cents per 100 pounds, or one-half the regular fourth class rate. Prior to August 31, 1908, there was effective on this traffic a rate of 11 cents per 100 pounds, but this rate was canceled upon the date named, leaving only the class rate to apply. On March 1, 1909, the 11-cent rate was restored. Reparation is sought in the amount of the difference between the charges collected and the charges which would accrue under the present rate.

Defendants admit the justice of the complaints and join in the request that reparation be awarded. By stipulation between the parties the complaints are submitted for determination upon the pleadings.

It is not the province of this Commission to order reparation for the exaction of an alleged unreasonable charge merely upon a showing that the carrier is willing to honor the claim. An award of reparation can be predicated only upon an affirmative finding that the rate exacted was in fact excessive. Accordingly it behooves the Commission to inquire with particular care into the merits of complaints such as those now under consideration lest unlawful preferences be unwittingly sanctioned. The 11-cent rate which was effective on this traffic prior to August 31, 1908, and reestablished on March 1, 1909, has been in effect for some years, but it must be remembered that this traffic is highly competitive, and the fact that the defendants found it impracticable to maintain the increased charge does not demonstrate its inherent unreasonableness. A carload of empty beer cases moving from Omaha or Kansas City to Milwaukee via the line of the defendant, the Chicago, Milwaukee & St. Paul Railway Company, would earn under the 11-cent rate a revenue ranging from \$16.50 to \$33, according as the weight of the shipment might vary from 15,000 to 30,000 pounds. Manifestly this represents little more than a nominal return for a haul of some 500 miles. Under the 16-cent rate which was in effect at the time these shipments moved the revenue accruing to the carrier would range approximately from \$24 to \$48 per car. It is difficult to see how these earnings can be held an excessive return for the service rendered, nor is this conclusion affected by consideration of the fact that the shipments in question consisted of returned empties, and that the carrier's chief recompense comes from the outbound movement.

No showing having been made that the rate challenged by the complainants in these proceedings was unreasonable, an order of dismissal will be entered.

No. 1611.
H. W. JOYNES
v.
PENNSYLVANIA RAILROAD COMPANY.

Submitted October 31, 1908. Decided June 19, 1909.

1. Petitioner, a dealer in fruits and general produce, charges discrimination, in that the defendant persistently delayed his shipments of fruit in Pittsburg at the Fifty-fourth street yards where the cars were not accessible to teams and could not be unloaded by him, while at the same time cars of other shippers were promptly placed in position at the unloading platform and were thus given a preferred use of the defendant's terminal facilities, and that by reason of said delay and discrimination petitioner suffered loss through the decay of the fruit and otherwise in the sum of \$30,497.70, for which amount he claims reparation: *Held*, That the Commission is without power under the law to make awards of general damages of that nature.
2. In cases of the nature involved in the complaint the Commission may ascertain whether the discrimination alleged actually occurred or whether the carrier has failed in a duty imposed upon it under any provision of the act as charged in the complaint. But the assessment of any resulting damages, other than damages that may be measured by differences in rates, must be left to be determined by action brought in a court of competent jurisdiction.
3. The language of the act being of doubtful interpretation, the Commission, which is a special tribunal of limited powers, ought not to take jurisdiction, but should resolve the doubt in favor of the courts where claims of this nature ordinarily belong.
4. Section 15 is the dominating and controlling expression of the real object and meaning of the act in its present form. It makes of the Commission what it was undoubtedly intended to be, namely, a special expert body created for the purpose of dealing with the rates and practices of carriers affecting rates, and not a body to take the place of the courts for the redress of alleged wrongs of the character involved in the complaint.

J. J. Foley, E. W. Stowe, and L. K. & S. G. Porter for complainant.
Henry Wolf Bikle, George Stuart Patterson, and George V. Massey for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In this proceeding the petitioner, who is a commission merchant at Pittsburg, dealing in fruits and general produce, charges the defendant with having persistently delayed his carloads of fruit at a point on
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its line in Pittsburg known as the Fifty-fourth street yards, where they were not accessible to teams, and therefore could not be unloaded by him, although during the same time the cars of other shippers were promptly placed in position at the unloading platform and were thus given a preferred use of the defendant's terminal facilities. The result of the alleged discrimination was that the petitioner's fruit, "when delivered at the proper destination, was found to be heated, withered, shrunken, and in a rotten condition," entailing upon him a loss, including demurrage, storage, additional help, and loss of trade, in the sum of \$30,497.70, and for this amount he asks an award of damages.

We therefore have before us the general question as to the power of the Commission to award damages for losses of that character suffered by shippers in consequence of acts and omissions of carriers that are in contravention of some provision of the act to regulate commerce as amended.

The question is not altogether a new one, and a brief statement of its history before the Commission may not be without interest. The first reported case in which the Commission was appealed to for an award of damages of this nature is *Heck v. East Tennessee, Virginia & Georgia R. R. Co.*, 1 I. C. C. Rep., 495, where the complainant sought to recover pecuniary damages against the carrier for its failure and refusal to accept coal for interstate carriage. The Commission declined to entertain the complaint, on the ground that it presented a case at common law where the amount in controversy exceeded \$20, and therefore under the seventh amendment to the federal constitution the defendant carrier was entitled to a trial by jury. But on the facts shown of record the Commission held that the conduct of the defendant in the premises was in contravention of the act to regulate commerce.

In *Councill v. Western & Atlantic R. R. Co.*, id., 339, the complainant, a colored man, demanded damages in the sum of \$25,000 for having been forcibly ejected from a car occupied by white people. While holding that the defendant carrier was required under the law to furnish the same accommodations to colored persons provided with first class tickets as were accorded to white persons holding such tickets, the Commission declined to consider the question of damages because it could not give the defendant the trial by jury to which it was constitutionally entitled.

In *Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co.*, id., 594, the complainant alleged a pecuniary loss arising out of an unjust discrimination, and again the Commission found that an unjust discrimination existed, but on the same ground declined to award damages. This case was decided in February, 1888.

The question did not again come before the Commission until December 1, 1890, when its report was published in *Macloon v. C. & N. W. Ry. Co.*, 5 I. C. C. Rep., 84. In the meantime the act to regulate commerce had been amended by the incorporation in section 16 of a provision giving a jury trial in the federal court in case the matter involved in any order entered by the Commission upon complaint was founded upon a controversy requiring a trial by jury as provided by the seventh amendment to the constitution. For the first time the Commission in that case entertained jurisdiction of a claim for damages of that nature. The case, however, did not attract wide attention, probably for the reason that the complainant was not successful in his action, the Commission holding that the proof was not sufficient to justify an award.

From that time forward occasional complaints involving damages of the character in question have been filed with the Commission. In all they have not exceeded 15 or 20 in number, for the fact that the Commission under an amendment to the law had announced its readiness to entertain complaints of that kind does not seem to have become generally known. Moreover, while awards were made in some cases, the majority of the complaints were unsuccessful and were dismissed on one ground or another. Since the act was amended, on June 29, 1906, several such complaints have been filed and one or two awards have been made; but the question of our authority to exercise such jurisdiction was not seriously discussed before us until the complaint herein was filed. It is our purpose, therefore, now to consider whether under the act to regulate commerce as amended the Commission is vested with authority to entertain jurisdiction of complaints of this nature. We shall examine the question as if it were one of first impression.

Notwithstanding the apparently conclusive language to be found in several paragraphs of the act as now amended, we have reached the conclusion that our power to award damages is limited to what for convenience we shall hereinafter refer to as transportation or rate damages, and does not extend to what we shall hereinafter allude to as general damages, being damages of the nature demanded in this complaint and having no connection with rates. This conclusion, as we shall endeavor to explain, is based upon well-defined general principles as well as upon the act to regulate commerce in its present form.

Transportation or rate damages are such as grow out of the collection by carriers of excessive rates, and are measurable by the difference between the rates actually collected on particular shipments, when upon complaint made and after hearing they are found and declared by the Commission to have been unreasonable, and the rates

which the Commission finds would have been reasonable rates at the time such shipments were made. Complaints for the recovery of rate damages also arise where an illegal or incorrect rate is charged or more than the proper freight charges are assessed at the legal rate. As to such matters, as well as to the rules, regulations, and practices of carriers affecting rates, the Commission, in the contemplation of the act itself and because of its accumulated experience of 22 years and its constant contact with transportation problems, has expert knowledge, and on that ground may speak somewhat with the authority of experts. It is for that reason, as is explained in *East Tennessee, etc., Ry. Co. v. I. C. C.*, 181 U. S., 1, that the Supreme Court of the United States has steadily refused to exercise its own original judgment on the facts in rate cases. The court is entitled, as it says at page 27, "to the aid which must necessarily be afforded by the previous enlightened judgment of the Commission upon such subjects." Again, in *Interstate Commerce Commission v. Clyde Steamship Co.*, 181 U. S., 29, that court, when urged to enter upon an original investigation of the facts in the case for the purpose of considering questions of discrimination, preferences, reasonableness of rates, and relation of rates, declined to do so on the ground that these were matters in the first instance for the exercise of its judgment by the Commission. In *Louisville & Nashville R. R. Co. v. Behlmer*, 175 U. S., 648, the court says (p. 675) that the law attributes prima facie effect to our findings because the Commission, "from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising." And in *Illinois Central R. R. Co. v. I. C. C.*, 206 U. S., 441, 454, the Commission is referred to as a tribunal "informed by experience," and with "knowledge of conditions, of environment, and of transportation relations," and the court indicates that on those grounds prima facie effect is given by the law to its orders.

These statements were made by the court in cases in which shippers had complained of the rates or of the practices of carriers affecting rates as this phrase is used in section 15 of the act. Similar statements are to be found in the opinions of other courts. It is, therefore, to be regarded as settled that the courts look upon the Commission as qualified by experience and from the nature of its duties to speak as experts with respect to the rates and practices of carriers, and that they will ascribe to our findings the weight and conclusiveness that are ordinarily attached to expert opinion. All this is consistent with the general scope of our functions as outlined in the act. It is also the general understanding that shippers may resort to the Commission for the redress of injuries arising out of the exaction by carriers of unlawful rates and for the correction of unlawful and discriminatory regulations and practices affecting rates.

There was need of the creation of an administrative body for that purpose; for the regulations and practices of carriers, as well as their rates, often give rise to questions of much technicality and difficulty and such problems are ordinarily beyond the experience of juries and can properly be disposed of only by a body of experts.

On the other hand, it has not been the understanding among the shipping public that the Commission was created for the purpose of taking the place of the courts in the disposition of the vast number of litigated cases in which shippers demand of carriers damages of the general nature involved in this complaint. That this is true is demonstrated by the fact heretofore stated that during the twenty-two years of its existence very few complaints have been filed with the Commission in which shippers have sought an award of damages of this nature. Moreover, the opinion of the Commission on any such question as that presented here can be of no greater value than the opinion of a jury. We are asked to award damages to the complainant to cover the losses which he claims to have sustained. We are well qualified by our experience with such questions to examine the testimony for the purpose of ascertaining whether the defendant in fact was guilty of a discrimination, as charged by the complainant, in favor of other shippers of fruit and perishable produce. But before we can go further with his complaint we must ascertain the difference between the market value of fruit in Pittsburgh at the time when his cars ought to have been placed in position at the unloading platform and the value of his fruit in the condition in which it was when the cars were finally placed at the proper point for unloading. We are also asked to ascertain and put a value upon the loss of trade alleged to have been suffered by him in consequence of his inability to deliver the fruit promptly to the customers who had purchased it. In other cases we have been asked to award damages to complainants, based on the market value of various commodities; to ascertain the amount of the depreciation of an elevator plant; to value the loss of the good will of a business concern resulting, as alleged, from the wrongful acts of the carrier; in another case we were asked to assess damages alleged to have been suffered by a complainant for the shrinkage and loss in weight of his hogs in transit, due to the refusal of a carrier to furnish double-deck cars.

All those claims were based upon the theory that the damages alleged arose out of the violation of some provision of the act to regulate commerce as amended. The various classes of claims that can and constantly do arise out of the negligent omission of carriers to do what they ought to do for shippers, or their negligence in doing what ought not to be done, are too varied to make it possible to attempt here to enumerate them. As to such matters the members of this Commission have no expert knowledge or any opportunity to

acquire it. The capacity to deal as experts with the large variety of questions that such claims present is of course not easily attainable. Each such case would depend upon its own peculiar facts. There is no good reason, therefore, for indulging the thought that the judgment of this Commission with respect to questions of that general nature would be any wiser or sounder than the opinion of a jury. As a matter of fact our opportunities for arriving at the exact truth in such cases would not be so good as the opportunity of a jury. With few exceptions the testimony in contested cases before the Commission is heard either before a commissioner sitting alone or before an individual examiner. The Commission as a body acquires its knowledge of the facts and reaches a conclusion upon the merits of the issue which the complaint presents only by listening to the oral argument and by studying the record and the briefs. The jury, on the other hand, in the great majority of cases is usually drawn from the district in which the alleged loss occurred and, besides having the advantage of some knowledge of local conditions, its members have the very great advantage of meeting the witnesses face to face and observing their demeanor and conduct and the manner in which their testimony is given. The impressions thus received by the jury, which all authorities agree are of great value in enabling it to balance and weigh the testimony and thus arrive at the exact truth in any such controversy, can not be preserved in the record or be adequately conveyed to us upon the argument.

When considering a complaint involving the rates or practices of a carrier, the Commission, being an administrative body performing its functions in the interest of the general public rather than in the interest of the particular litigants, is entitled to bring to its aid all the information that can be drawn either from the records in other complaints before it or from its general experience and knowledge of transportation matters. The right which courts have to take judicial notice of certain classes of facts is extended in the case of the Commission to the entire range of its experience with transportation problems and embraces all the knowledge that it has gathered from any source. In the solution of a particular controversy it is entitled, in the general public interest, to use all available information. We are assumed to know what needs to be known in correctly solving any question relating to the rates or to the rules, regulations, and practices of carriers affecting rates; and where we do not in fact know, it is our duty to ascertain what is essential to a proper conclusion. But the value of complainant's decayed fruit and the loss in trade that he may have suffered in consequence of his inability at that time to supply the requirements of his customers are questions altogether beyond the range of our experience. Our

opinion on either question acquired only from a zealous attention to the argument and a careful study of the record would in the end be simply the opinion of seven men wholly unenlightened by experience or general information as to such matters, and without that opportunity to arrive at the exact truth which a jury enjoys by personal contact with the witnesses.

For these reasons, and for others presently to be mentioned, we have reached the conclusion that the Commission may not properly undertake duties of this nature. If it be once firmly established and generally understood that a shipper who has suffered a damage of this kind at the hands of an interstate carrier, which may be attributed to an act or omission by it in contravention of the many duties and obligations imposed upon carriers by the various provisions of the act, and if it be also understood that we are prepared to deal efficiently with such questions, neither this Commission nor any other commission, constituted with some regard to numbers, would be able to keep up with the burden of the labor of that character that will be cast upon it. When our jurisdiction is invoked under a complaint of that nature we can and ought to ascertain whether the discrimination complained of in fact exists or whether the carrier complained of has in fact failed in a duty imposed upon it by any provision of the act as charged in the complaint. Such matters are ordinarily technical in nature, and the justice of such complaints can be determined more readily by the Commission than by a jury. But having ascertained the existence of the discrimination or the commission of an act or the omission of a duty, the Commission should leave the assessment of any resulting damages to be determined in a formal action brought in a court of competent jurisdiction.

Our understanding of the act is that it gives us a reasonable discretion in entertaining and refusing to entertain complaints that are presented to us. And in our judgment, even if we had the powers which the complainant here seeks to invoke, that discretion is reasonably exercised when we decline, in the general public interest and in deference to the other very important work before us, to deal with matters about which we can know but little and which the courts, where such matters properly belong, can deal with so much more efficiently.

Since its original enactment the act to regulate commerce has been amended many times, without being redrafted as a whole, in order to bring its various provisions into harmony with one another. The result is that the act is not free from inconsistencies, and at some points doubts arise as to its real meaning. If proof of this is needed it will suffice to examine the opinion of the Supreme Court of the United States in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*,

204 U. S., 426, where the court, on the ground that "the act can not be held to destroy itself," found it impossible to give effect and meaning to, and in substance reads out of, sections 9 and 22, language much more definite and positive, in our judgment, than the language upon which the complainant here rests his contention that the Commission may award him damages for the loss which he claims to have suffered by reason of the rotting and decaying of his carload shipments of fruits. In considering section 9 of the act in connection with the contention made in that case that its language compelled the mind to the conclusion that it was the purpose of Congress to confer upon the courts the power primarily to make an award of damages on the ground that the rate collected was unreasonable, the court said (p. 441):

True it is that the general terms of the section, when taken alone, might sanction such a conclusion; but when the provision of that section is read in connection with the context of the act, and in the light of the considerations which we have enumerated, we think the broad construction contended for is not admissible.

There are several reasons why we ought to approach this very important question of jurisdiction only after taking this broad view of the scope and meaning of the whole act. One very practical reason for this course is that a special administrative body in case of doubt ought not to take jurisdiction, but should resolve the doubt in favor of the courts where such jurisdiction is ordinarily vested. Upon every consideration we must be careful to examine the language of any particular section of the act, not as it stands alone and separate from what is elsewhere said in the act, but in the light of its general purpose as we may gather it from the statute as a whole. This is an elementary rule of construction sanctioned by many reported decisions in the state and federal courts. The principle is strongly stated in *Lessee of Brewer v. Blougher*, 14 Pet., 198, where the court says:

It is undoubtedly the duty of the court to ascertain the meaning of the legislature, from the words used in the statute, and the subject-matter to which it relates, and to restrain its operation within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it.

We have yet to see in any of the adjudicated cases, in which some provision of the act to regulate commerce was under consideration and in which the object and scope and general character of the duties and functions of the Commission are referred to and characterized, a single definite and conclusive expression indicating that the act was intended to confer upon us authority to deal with claims of this nature. That it has not been the general understanding that the Commission was authorized to exercise such powers appears with peculiar force, as heretofore stated, from the fact that so few complaints of this nature have been filed with us. All this is very persuasive and

lends much force to the contention that no such authority was intended to be given to the Commission.

The language of the act upon which the petitioner rests our supposed authority to deal with his complaint seems far from clear. Section 8 of the act, which has sometimes been referred to as giving the Commission such powers, will be found upon a more careful reading not to have any relation to the jurisdiction of the Commission. It creates a substantive right of action to recover damages for the violation by a carrier of some provision of the act, but leaves the right enforceable only in the courts. Such a right of action having been established, section 9 gives the shipper a judicial forum, namely, a district or circuit court of the United States of competent jurisdiction, in which to "bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act." The same section gives "any person or persons claiming to be damaged by any common carrier subject to the provisions of this act" the right to make complaint to the Commission "as hereinafter provided for." The only subsequent provisions to which this clause can relate are sections 13, 14, 15, and 16; and, of these, section 15 is, in our judgment, the dominating and controlling expression of the real object and meaning of the act in its present form. It makes of the Commission what it was undoubtedly intended to be, a special expert body created for the purpose of dealing with the rates and the rules, regulations, and practices of carriers affecting rates, and not a body to which shippers might resort for the redress of alleged wrongs of the character involved in this complaint, of which courts have long had jurisdiction and as to which they are fully equipped for doing exact justice.

Our conclusion is that the Commission is without power to make awards of general damages of this kind. The complaint must therefore be dismissed, and such an order will be entered unless we are advised by the complainant of his desire to have the Commission consider whether, apart from the question of the general damages claimed, the acts of the defendant as alleged in the complaint constituted an undue and unjust discrimination.

LANE, *Commissioner*, dissenting:

The decision of the majority is, as I view it, a surrender of jurisdiction clearly conferred, and thus far exercised without challenge. It is conceded that the facts alleged in this complaint would, if found true, constitute such undue discrimination as is forbidden by the act. It is further admitted that the Commission has authority to order the carrier to cease and desist from such discrimination in the future. But the power to redress the past injury by an award of reparation is

denied. I can not concur in this conclusion, and shall endeavor to state, as briefly as I may, the reasons for my dissent.

Section 3 of the act contains a sweeping prohibition against "any undue or unreasonable prejudice or disadvantage in any respect whatever." This is broad enough to cover every form of discrimination. The statute would be peculiarly defective if a carrier could with impunity subject a shipper to all manner of discrimination in the delivery of his perishable freight. I can conceive of no form of discrimination which would be more disastrous to a shipper than persistent delay in delivering his perishable freight, while like shipments of his competitors are placed promptly upon arrival at destination. Beyond all doubt section 3 applies to just such discrimination as is alleged in this proceeding. The case of *United States ex rel. Morris & Co v. D., L. & W. R. R. Co.*, 40 Fed. Rep., 101, is conclusive upon this point. The court says (p. 108) :

The latter (section 3) is comprehensive enough, standing alone, to include every form of unjust discrimination, not only in rates, but also in the conveniences and facilities supplied to shippers in any of the details of the carrying service, and such is the judicial construction in England of the term "undue or unreasonable preference or advantage," as used in the English "Railway and canal traffic act" (17 & 18 Vict., c. 31, sec. 2).

The jurisdiction of the Commission is coextensive with the mandates and prohibitions of the act. Section 3 has not been changed by the Hepburn law, and sections 8 and 9 have likewise been retained in their entirety. Section 15 has been superseded, but the powers which it conferred are more than covered by sections 15 and 16 of the amended law. The law clearly contemplates that a shipper who has been the victim of discriminatory practices on the part of a carrier shall have a twofold remedy before this Commission: (1) An order upon the carrier to cease and desist from the unlawful practices in the future. (2) Redress for the past injury by an award of reparation. By the decision of the Commission herein, the second of these remedies is read out of the law. The case of *T. & P. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, is cited, but in my judgment that case is in no respect a precedent for the action now taken. Conceding that the Supreme Court found it necessary to read certain language out of the act in order to reach its decision in the *Abilene case*, that course was necessary in order to give consistency and vitality to the law. It is only too apparent, as the court says, that if the federal courts as well as the Commission were to entertain, in the first instance, complaints predicated upon the unreasonableness of established rates conflicting decisions would inevitably ensue. We owe much to the Supreme Court for this broad construction of the law. It is clear that a contrary decision would have led to infinite

mischief. But it is hardly necessary to point out that no possible conflict could arise from the concurrent authority of the Commission and the courts to award damages for unlawful discrimination in furnishing facilities of transportation. The cases are in no respect parallel. The following comprehensive statement of the Commission's powers is found in the opinion of the court in the *Abilene case*:

Power was conferred upon the Commission to hear complaints concerning violations of the act, to investigate the same, and, if the complaint were well founded, to direct not only the making of reparation to injured persons, but to order the carrier to desist from such violation in the future. * * * That the act to regulate commerce was intended to afford an effective means for redressing wrongs resulting from unjust discrimination and undue preference is undoubted. Indeed, it is not open to controversy that to provide for these subjects was among the principal purposes of the act.

This would seem to be a definite recognition of our authority to award damages for any violation of the act.

In numerous cases the Commission has asserted its power to award damages for discrimination in furnishing facilities for transportation and in effecting delivery of freight. One of the earliest of these is the case of *Macloon v. C. & N. W. Ry. Co.*, 5 I. C. C. Rep., 84. The defendant had refused to switch cars from its tracks to the tracks upon which the complainant's plant was located unless he promised in advance to pay any demurrage charges which might be assessed, regardless of their legality. This switching service was performed for other shippers without exacting any such promise. It was held that the case came under the prohibition of the third section, which forbids the subjection of any person to any undue or unreasonable prejudice or disadvantage in any respect whatever. It was held, further, that the plaintiff was entitled to reparation, but, the proof of damages being insufficient, the case was held open pending notice of adjustment by the parties themselves.

In *Eaton v. C., H. & D. Ry Co.*, 11 I. C. C. Rep., 619, the Commission found that the defendant had subjected the complainant to unjust discrimination in furnishing cars for shipment of hay and grain. Reparation was awarded in the amount of \$200, the business loss which complainant had suffered by reason of the discrimination.

In *Rogers & Co. v. P. & R. Ry. Co.*, 12 I. C. C. Rep., 308, it appeared that the defendant had declared an embargo on complainant's shipments of hay and straw. Pursuant to this embargo, seven cars of hay consigned to complainant were refused delivery, and the loss on these shipments, due principally to a falling market, was \$190.70. The Commission held that, on proper showing that the shipments were interstate in character, reparation would be awarded in the amount named.

In *Eichenberg v. S. P. Co.*, 14 I. C. C. Rep., 250, the Commission condemned as unlawful certain discriminations in the furnishing of terminal facilities at Galveston, Tex., the case being held open for further evidence, looking to an award of reparation.

In the case of the *Glade Coal Co. v. B. & O. R. R. Co.*, 10 I. C. C. Rep., 226, and *Paxton Tie Co. v. D. S. R. R. Co.*, 10 I. C. C. Rep., 422, reparation was awarded for damages resulting from discrimination in the furnishing of cars. (See also *Phelps & Co. v. T. & P. Ry. Co.*, 6 I. C. C. Rep., 36; *American Warehousemen's Asso. v. I. C. R. R. Co.*, 7 I. C. C. Rep., 556; *St. Louis Hay & Grain Co. v. C., B. & Q. R. R. Co.*, 11 I. C. C. Rep., 83; *Miner v. N. Y., N. H. & H. R. R. Co.*, 11 I. C. C. Rep., 422.)

It is suggested that comparatively few complaints involving damages of the character in question have been filed with the Commission, but manifestly this has no bearing upon the scope of the authority which the statute confers. It is urged that the exercise of the power to award reparation in such cases would greatly multiply proceedings before the Commission, but this, I again submit, does not justify a disclaimer of jurisdiction. The difficulty of estimating damages is likewise without persuasive force.

I can not agree with the holding of the majority that the act "gives us a reasonable discretion in entertaining and refusing to entertain complaints that are presented to us." It is my understanding that whenever a complaint is filed presenting a violation of the act, this Commission can not decline to take jurisdiction. In any event, a shipper whose business had been ruined by railroad discrimination would find it difficult to understand why the Commission, in the exercise of its discretion, should yield up a part of its salutary power and render itself impotent to redress his wrongs.

Commissioners CLEMENTS and PROUTY unite in this dissent.

17 I. C. C. Rep.

No. 2950.

PACIFIC ELEVATOR COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted November 9, 1909. Decided January 4, 1910.

The Commission should not and will not award reparation on the basis of a rate that is lower than that which the Commission would prescribe as reasonable. It is not sufficient that a shipper who is willing to receive a refund and a carrier that is willing to make a refund to that shipper shall agree to jointly request the Commission to authorize such refund. Complaint dismissed.

William A. Poehler for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

S. G. Lutz for Minneapolis & St. Louis Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

By stipulation, this case, the petition in which was filed November 9, 1909, is submitted on the pleadings; hearing, briefs, and oral argument being waived.

As submitted the following facts appear: On January 25, 1907, complainant shipped two carloads of soft coal from Green Bay, Wis., one to Wetonka and one to Leola, S. Dak. Charges aggregating \$102.60 and \$94.08 on basis of weights of 53,300 and 53,000 pounds and rates of \$3.85 and \$3.55 per ton, respectively, were paid November 19, 1908. The rates charged were combination of tariff rates to Watertown, S. Dak., and application of distance tariff rates from that point to destinations. The shipments moved during construction of a branch line of defendant Minneapolis & St. Louis Railroad west of Watertown and previous to the establishment of joint rates. Wetonka is 773 miles from Green Bay and 103 miles from Watertown. Leola is 11 miles farther distant. The rate charged to Leola was, however, 30 cents per ton less than that charged to Wetonka.

We can not locate any tariff naming rates from Watertown to Wetonka and Leola that was in effect when these shipments moved.

The rate from Green Bay to Watertown at that time was \$2.85 per ton, minimum 30,000 pounds. Effective January 30, 1907, rates were established from Green Bay to Leola of \$2.85 per ton and to Wetonka of \$2.75 per ton. That rate to Leola is still in effect, but on April 30, 1909, the rate to Wetonka was reduced to \$2.70 per ton, and that is the present rate.

It is apparent from the record that some difficulty was encountered in securing payment of the charges assessed on these shipments, and there is indication that a promise was made on part of officials of defendant Minneapolis & St. Louis Railroad to endeavor to secure settlement of claims for alleged excessive rates if such were filed subsequent to payment.

It is understood that in order to determine the charges from Watertown to Wetonka and Leola distance-tariff rates were applied, but there is no basis for the assumption that such rates were lawfully applicable to the line then under construction.

At the time these shipments moved the rate from Green Bay to Watertown, a point more than 100 miles less distant than either Wetonka or Leola, was \$2.85 per ton. At the same time the Chicago & Northwestern Railway had in effect, subject to carload minimum of 40,000 pounds, rates from Green Bay to Watertown of \$2.20 per net ton; to Faulkton, S. Dak., 100 miles west of Watertown, \$3.30 per ton; and to Gettysburg, S. Dak., 139 miles west of Watertown, \$3.50 per ton; and the last two rates are still in effect.

In *Fort Dodge Commercial Club v. I. C. R. R. Co.*, 16 I. C. C. Rep., 572, the Commission found that a rate on splint coal that yielded 5 mills per ton per mile was not unreasonable and cited previous decisions in support thereof. In the present case the rates charged complainant yield in one instance 4 mills and in the other instance 4.4 mills per ton per mile.

Beyond the agreement between complainant and defendants there is here no showing that the charges upon these shipments were unreasonable. As has so often been said, a carrier may voluntarily establish rates lower than it could be compelled to make. The Commission should not, however, and will not, award reparation on the basis of a rate that is lower than that which the Commission would prescribe as reasonable. It is not sufficient that a shipper who is willing to receive a refund and a carrier that is willing to make a refund to that shipper shall agree to jointly request the Commission to authorize such refund.

An order will be entered dismissing this complaint.

No. 2202.

WILLIAM C. SNOOK

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted September 29, 1909. Decided January 4, 1910.

1. The general rule that a tribunal, whose authority is invoked by a complaint filed before it, must determine whether the subject-matter is within its jurisdiction before it may consider the merits of the controversy does not necessarily control an administrative body, although affirmative relief may not be granted in any case unless jurisdiction over the subject-matter is definitely ascertained.
2. Following the course pursued in *Jones v. St. Louis & San Francisco R. R. Co.*, 12 I. C. C. Rep., 144, and without determining at this time whether the Commission has jurisdiction to require interstate carriers to erect or to continue to maintain station facilities at particular points, the facts of record here have been examined for the purpose of ascertaining whether, assuming such power to exist in the Commission, enough has been shown to warrant an order requiring the defendant to continue to maintain station facilities at Roycefield, N. J.
3. Upon all the testimony of record; *Held*, That the discontinuance of the defendant's agency station at the point in question can not be regarded as a violation of the act to regulate commerce.

John H. Saums for complainant.

Jackson E. Reynolds for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In *Jones v. St. Louis & San Francisco R. R. Co.*, 12 I. C. C. Rep., 144, where the complainant demanded the restoration by the defendant at Chase, a town in what was then called Indian Territory, of station facilities that had formerly existed at that point, the question of our authority to exercise control in such matters necessarily arose. After a brief reference to the adjudicated cases in which similar questions were involved, we said (p. 150):

It will not be necessary, however, to multiply citations or to further discuss the facts appearing on this record. The contention that this Commission has the power to grant relief of the character sought in this petition is, to say the least, one that is open to doubt. But without deciding at this time whether we have any such jurisdiction, it is manifest that the Commission ought not to exercise such power in any case, and ought not to enter such an order in this case, unless all the facts and conditions clearly indicate, as an indispensable
17 I. C. C. Rep.

element in the controversy, that the interests of the general public in the locality involved have been materially impaired by the removal of the station to the new point, or that the public will be better served by the restoration of the station at the old point. There are no such facts shown in this record. And the principles announced in the cases above referred to, as well as in numerous other cases that might be cited, require us to hold that the complainants are not entitled to an order by this Commission requiring the defendant to reerect and maintain either a freight or a passenger station at the town of Chase.

In other words, avoiding the decision at that time of the question as to the authority of the Commission under the law to control the acts and doings of interstate carriers in that respect, we ventured to look at the merits of the case; and after a full examination of the record we held that, even if the Commission had the power to require carriers to establish or to continue to maintain station facilities at a given point, the facts shown of record were not sufficient to justify the exercise of the power in that case. This course was at variance with the usual, if not the universal, rule that requires a tribunal whose authority is invoked first to determine whether the subject-matter of the action is within its jurisdiction as established by law. It is not clear, however, that this rule of judicial decorum need necessarily control an administrative body in all cases. Affirmative relief of course can not be granted in any case until it is definitely ascertained that the subject-matter of the complaint is clearly within our jurisdiction. But as the facts shown of record in the case cited were such as would have required us to deny the relief asked, if jurisdiction existed, we did not think it improper, in view of the very great importance of our rulings on transportation questions, to dismiss the case on the merits without deciding at that time whether the subject-matter was within our regulative control under the law. The point had not been presented fully, and without the benefit of a careful argument of what we regard as an important question we were not willing definitely to say that the Commission was without power to issue orders in such complaints.

A like situation confronts us in this proceeding. The complainant demands the restoration of station facilities at Roycefield, in the state of New Jersey, without giving us the benefit of any suggestions in support of the proposition that the Commission is vested with authority to enter such orders. While there is some discussion of the question on the brief filed in behalf of the defendant, in which it is denied that the Commission has any such jurisdiction, we again feel that the question has not been fully presented to us. We shall therefore pursue in this proceeding the course followed in the previous case, and shall look into the merits with the view to ascertaining whether the complainant on the facts shown of record would be entitled to relief if the question of our power to enter such orders had been decided definitely in the affirmative.

The facts in the case are as follows: Roycefield is 38.3 miles from New York City, on the south branch of the Central Railroad of New Jersey. It lies between Somerville and Flemington, which are about 16 miles apart in what we understand to be a sparsely settled farming district. Somerville has a population of 5,000 or 6,000 inhabitants and is 2.6 miles north of Roycefield. It is an agency station, as is Flagtown, 2.8 miles south of Roycefield. South Somerville is a station on the Lehigh Valley about three-fifths of a mile due east of Roycefield, although by wagon road the distance is slightly greater. The Lehigh Valley at this point runs substantially parallel to the defendant's line, and at Roycefield is about one-third of a mile distant from the defendant's right of way.

The defendant established a station at Roycefield about forty years ago, and until November 8, 1908, when the station building was destroyed by fire, an agent was maintained there. For a few months after the fire a freight car was used as the station, and was in charge of an agent, who was withdrawn shortly before the filing of the complaint on March 9, 1909. Roycefield is now a flag station. And Snook, the petitioner, complains of this state of affairs as constituting a violation of the act in that it subjects him, as he alleges, to undue and unreasonable prejudice and disadvantage. He therefore prays for an order requiring the defendant to cease and desist from the violation, and that it be ordered to reopen its temporary station and to install an agent therein until such time as a permanent station shall have been erected. There is also a prayer "for such other and further orders as the Commission may deem necessary in the premises."

The record indicates that Roycefield in the past has been a station of more importance than it is at this time. It now has no post-office, no church, no stores, no hay press, no creamery, or business houses of any kind. There is not even a school at Roycefield. Within a circle with a radius of $1\frac{1}{2}$ miles from the center of the town there are said to be but 37 houses of all descriptions, of which 24 are south of the Lehigh Valley rails, 8 are located between that line and the defendant road, and only 5 are north of the right of way of the defendant. It also appears that the opening of a station on the Lehigh Valley at South Somerville has resulted in taking much traffic that formerly was received and delivered by the defendant at Roycefield. A map of the territory immediately surrounding Roycefield and Somerville indicates that the majority of the residences and farmhouses are nearer the latter point than to Roycefield. Another fact of significance is that a large tract of land extending substantially from the city limits of Somerville southward to a point near Roycefield has in recent years been converted into one large estate, the numerous small farms of which it was formerly

composed having been acquired by one interest. The result of this change of ownership is that families formerly residing on the land have moved away and no longer contribute traffic to the defendant at the Roycefield station. This large estate is adjacent to Somerville, which, as heretofore indicated, is a place of some importance, where all necessary facilities are furnished by the defendant for handling the freight and passenger business destined to and from the estate.

About 15 trains are operated in both directions daily through Roycefield and only about 15 passengers a day get on and off the trains at that point. During December, 1908, no commutation ticket between New York and Roycefield was sold, and but one during each of the months of January, February, April, May, September, October, and November of that year. Two were sold in March, June, July, and August. During 1909 no such ticket was sold during January and February, but one in March, April, May, and July, and two in June. For the year ending June 30, 1908, the defendant's passenger revenue at Roycefield was \$1,253 and its freight revenue \$347. For the year ending June 30, 1909, the passenger revenue was \$1,006 and its freight revenue \$373. Only one of all the stations on the defendant's line produces less revenue. To maintain the station with an agent costs the defendant from \$700 to \$1,000 a year. As heretofore indicated, it is now a flag station, at which, as is understood, the defendant will receive passengers when the train is flagged or will discharge passengers upon notice. Tickets are sold upon the train. Baggage is received with passengers outbound, and upon notice to the baggage agent will be put off the inbound train at Roycefield. Less-than-carload freight is not received or delivered, but outbound carload freight is shipped, charges following. Inbound carload freight is generally prepaid, but exceptions are made because of the acquaintance of the agent at Somerville with the residents of Roycefield.

In view of the fact that the defendant maintains stations at short distances both north and south of Roycefield, and that a station with all the facilities that the neighborhood seems to require is maintained only a short distance away, at South Somerville, on the Lehigh Valley, the discontinuance of Roycefield as an agency station can not be regarded as a violation of the act to regulate commerce even if the act is to be construed as controlling in respect to such matters and as giving the Commission power to enter such orders as are here demanded.

The complaint must therefore be dismissed, and it will be so ordered.

No. 2174.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, FOR THE USE AND BENEFIT OF THE ROBINSON, CRAWFORD & FULLER LUMBER COMPANY

v.

CHICAGO, ROCK ISLAND & GULF RAILWAY COMPANY
ET AL.

Submitted August 19, 1909. Decided January 3, 1910.

1. It is the duty of an interstate carrier to receive interstate shipments, to issue receipts therefor, to indicate on the waybills the final destinations, and to transport and deliver them to its connecting carriers; and it is the duty of the connecting carriers to transport and deliver at destinations, each carrier charging for its service its legally published rate.
2. Rates charged on shipments of lumber from Beckville, Tex., to certain points in Oklahoma found unreasonable, and reparation awarded.

Charles West, attorney-general.

George A. Henshaw, assistant attorney-general; *E. C. Patton* and *M. D. Smith* for complainants.

Terry, Cavin & Mills and *A. H. Culwell* for Texas & Gulf Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

H. L. Redfield for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The Robinson, Crawford & Fuller Lumber Company is a corporation doing business at the town of Duncan and other points in the state of Oklahoma and is the shipper and the real party in interest in this case and will be designated as the Lumber Company. It charges that between November 1, 1907, and May 21, 1908, it delivered at Beckville, Tex., to the defendant Texas & Gulf Railway Company, to be transported to Oklahoma points, 63 carloads of lumber as follows: 39 carloads with destination shown as Duncan, Okla.; 22 carloads with destination shown as Comanche, Okla.;

1 carload with destination shown as Marlow, Okla.; 1 carload with destination shown as Waurika, Okla., and made specific request that they should be billed and transported to said points. The Texas & Gulf Railway refused to so bill them or any of them to said points, because the joint through rate theretofore in force had been canceled. In order to make the shipments the Lumber Company had to bill them as required by the said defendant, and the Lumber Company had all of said cars billed to Ringgold, Tex., except 3, which were billed to Longview Junction at the rate of 5 cents paid, and the 3 cars were delivered there to the Texas & Pacific Railway, destined to Duncan, Okla., at rate of $26\frac{1}{2}$ cents, making a $31\frac{1}{2}$ cent total charge. On 59 of said cars destined to Duncan, Comanche, and Marlow, Okla., the Lumber Company paid $18\frac{3}{4}$ cents from Beckville to Ringgold, and 16 cents beyond, making $34\frac{3}{4}$ cents per 100 pounds, and on one carload to Waurika $18\frac{3}{4}$ cents to Ringgold and $14\frac{1}{2}$ cents beyond, making $33\frac{1}{2}$ cents. The Lumber Company charges that all of said rates charged and paid were unjust and unreasonable and that $26\frac{1}{2}$ cents per 100 pounds from Beckville to the Oklahoma points, Duncan, Comanche, and Marlow, and $22\frac{1}{2}$ cents from Beckville to Waurika are just and reasonable rates for the services rendered, and claims reparation in the sum of \$2,464.77. It states that prior to October 13, 1907, the defendants had, and maintained, joint through rates of $26\frac{1}{2}$ cents from Beckville to the three points named in Oklahoma, and $22\frac{1}{2}$ cents from same to the other point named, and on said date said rates were canceled and so remained canceled until May 24, 1908, when they were reestablished and are now in force.

In their answers the defendants all admit the existence, the cancellation, and the restoration of the joint through rates of $26\frac{1}{2}$ cents and $22\frac{1}{2}$ cents from Beckville to the Oklahoma points named. The Texas & Gulf Railway denies all the charges and avers that the Lumber Company delivered the 63 carloads to it at Beckville, with instructions to bill and ship to Ringgold, and denies that it was advised, informed, or knew of ultimate destination. The Texas & Pacific claims it was and is an intermediate carrier, and the cancellation of the joint through rate was made necessary by letter from J. C. McCabe, dated July 20, 1907, stating that—

On and after September 15, 1907, the Rock Island lines would decline to participate by way of their Texas connections in any absorption accorded side lines on lumber for interstate points on their lines.

The Chicago, Rock Island & Gulf and the Chicago, Rock Island & Pacific, in joint answer, admit the payments of the rates charged and deny responsibility for the cancellation. All the parties appeared at the hearing.

The facts in this case are that the lines of the defendants extend from Beckville, Tex., to the points named in Oklahoma, the Texas & Gulf to Longview Junction, about 26 miles; the Texas & Pacific to Fort Worth, 156 miles; and the Chicago, Rock Island & Gulf and Chicago, Rock Island & Pacific, via Ringgold, to the points named; that for some years prior to October 13, 1907, the defendants had and maintained joint through rates between the points named of 22½ cents to Waurika and 26½ cents to Duncan, Comanche, and Marlow, which were canceled on October 13, 1907, and so remained until May 24, 1908, when they were restored and are now in effect. During the interval the shipments as charged were made and the rates were paid, as stated. The Lumber Company applied to the Texas & Gulf Railway Company, at Beckville, to have all said cars billed from Beckville to it at the Oklahoma points named, and the said defendant refused to receive and so bill them, and upon written request for the reason of such refusal the agent replied in writing:

I will not sign bill lading for carload lumber destined to Duncan, Okla., for the reason that our connecting lines will not give us through rates to any interstate Rock Island point.

The Lumber Company, in order to get the lumber to its places of business, had to accept such billing as the said defendant would give. The Texas & Gulf Railway was fully advised as to the destinations desired. It had previously been a party to the joint through interstate rates between the points named and was at the time a party to an 18½-cent rate to Ringgold, Tex., and subsequently became, and now is, a party to joint through rates between the points named, and its charges on all of the shipments, except the three cars shipped to Longview Junction, on which its charges were paid, went forward and were paid at the destinations in Oklahoma. The Texas & Pacific Company knew that the said three cars delivered to it at Longview Junction, with charges paid thereon, were destined for and were billed to Duncan, Okla. On all the other shipments the charges of the Texas & Gulf Railway, the Texas & Pacific Railway, and the Chicago, Rock Island & Gulf Railway were forwarded as advance charges and were paid at destinations in Oklahoma, and on all of the cars except three the charges were 18½ cents from Beckville to Ringgold and 16 cents beyond to Duncan, Comanche, and Marlow, and 14½ cents beyond to Waurika, 18½ cents being the rate from Beckville to Ringgold, Tex., and 16 cents the rate beyond. In most of the freight bills they were specified as 18½ cents and 16 cents, and in many of them Beckville was named as the point of origin, and on the car to Waurika 18½ cents and 14½ cents were named. No claim whatever was made that the joint rates of 26½ cents and 22½ cents from Beckville were unreasonably low or not fairly remunerative.

The interstate-commerce law is explicit in its requirements. It says:

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

It further says:

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor.

It defines transportation and then declares:

It shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor and to establish through routes and just and reasonable rates applicable thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Our conclusions are that it was the duty of the Texas & Gulf Railway to receive the shipments, to issue to the Lumber Company a receipt therefor, to indicate on the waybills the final destinations, and to transport and deliver them to its connecting carrier, and that it was the duty of the connecting carriers to transport and deliver at destinations, each carrier charging for its service its legally published rate.

It is further the conclusion of the Commission that the rates charged for the services rendered were unreasonable and unjust to the extent that they exceeded 26½ cents from Beckville, Tex., to Comanche, Duncan, and Marlow, Okla., and 22½ cents from Beckville to Waurika, Okla., and that the complainant, the Lumber Company, is entitled to reparation in the sum of \$2,450.82, with interest, being the amount of the charges paid over and above the amount of the said joint through rates now in effect. An order will be issued accordingly.

No. 2419.

OCEAN COUNTY COAL COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.

Submitted October 5, 1909. Decided January 3, 1910.

Complaint of undue discrimination in coal rates to Point Pleasant, as compared with the rates on coal to other stations on the coast of New Jersey, not sustained by the evidence and therefore dismissed.

Patterson & Rhome for complainant.

Jackson E. Reynolds for Central Railroad Company of New Jersey.

George Stuart Patterson for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

Complainant charges undue discrimination in rates on anthracite coal against Point Pleasant, N. J., a station about 2.5 miles south of Seagirt, one of the junctions of the Amboy Division of the Pennsylvania Railroad with the New York & Long Branch Railroad. The rate from the Schuylkill coal mines in Pennsylvania to Point Pleasant is \$2.05; to Seagirt, \$1.90; to Manasquan, a station between Seagirt and Point Pleasant, \$1.90; and to Long Branch, 18 miles north of Seagirt, \$1.90. Rates from the Wyoming coal fields are 5 cents higher to all points. Defendants, while admitting the rates are as set forth, deny discrimination.

Point Pleasant is a town of about 2,500 inhabitants. Complainant, the only coal dealer there, does a business of four or five thousand tons per year. The New York & Long Branch Railroad extends from Bay Head, a station a mile south of Point Pleasant, northerly along the Atlantic coast to the neighborhood of Perth Amboy, passing through Manasquan, Seagirt, Spring Lake, Asbury Park, Long Branch, etc. This railroad is operated jointly by the Central of New Jersey and the Pennsylvania railroads. The former approaches Point Pleasant from the north via the New York & Long Branch Railroad, the distance from the Wyoming coal regions to Point Pleasant, via that line, being 211 miles. The distance via the Pennsylvania, approaching from the south via Camden, Whitings,

and Seaside Park to Bay Head, is 238 miles. Schuylkill coal destined to Bay Head and south thereof pays a rate of \$2.05 per ton. These rates are higher than the rates via the Central of New Jersey to points north of Bay Head. The Pennsylvania claims that if it is to take part in the transportation of coal to points north of Bay Head it must meet the competition of the shorter line via the Central of New Jersey. The Pennsylvania road on the coast does a very light freight business, having been constructed largely for the summer passenger traffic. The winter service consists of one train a day each way, and very little freight is hauled with the exception of outbound fish.

Respondents defend the situation at Point Pleasant by the fact that to points north of Point Pleasant the \$1.90 rate is made by the Central of New Jersey, the shorter line. From Bay Head southward the Pennsylvania has its own road and makes a group rate of \$2.05 as far as Seaside Park and westward as far as Hanover. If the rate to Point Pleasant should be reduced, a reduction of the rates to all these points would be necessary.

Manasquan is 2.5 miles from Point Pleasant and complainant claims that coal dealers can bring coal from Manasquan to Point Pleasant and sell it 15 cents a ton cheaper than he can. Coal is sold from Manasquan and Point Pleasant to supply the territory between. The Central of New Jersey delivered 1,907 tons and 4 hundredweight of coal in Point Pleasant for the two years ending July 31, 1909, and into Manasquan 1,169 tons and 6 hundredweight during the same time. Some of the coal delivered into Point Pleasant was carted to Bay Head and points south.

The immediate question involved here is whether the rate to Point Pleasant is unreasonable and is that place discriminated against because of lower rates to points north. There is no evidence tending to show that the rate is unreasonable, other than a comparison with the rates to towns north and the fact that the Pennsylvania hauls coal to Seagirt, a longer distance north, at a lower rate than it hauls it for similar distances south, including Point Pleasant. The record shows that the rate to Seagirt and north thereof is fixed by the shorter line over the Central of New Jersey, and that the Pennsylvania meets the rate thus made and applies it to Manasquan. If the rate to Point Pleasant should be reduced, it would affect the rates on the Camden or Amboy division of the Pennsylvania, as hereinbefore stated. There was no allegation or proof that the coal rates to Point Pleasant are unreasonable, and we are of the opinion that that locality is not unduly prejudiced or discriminated against because of the juxtaposition of the groups taking the \$1.90 and the \$2.05 rates, or because of the lower rates to more distant points north, those rates having been made to meet competition by the shorter line. The complaint will be dismissed.

No. 2719.
FOSTER LUMBER COMPANY
v.
GULF, COLORADO & SANTA FE RAILWAY COMPANY ET AL.

Submitted December 20, 1909. Decided January 3, 1910.

1. Rates complained of not found so unreasonable as to entitle complainant to reparation. *Foster Lumber Co. v. A., T. & S. F. Ry. Co.*, 15 I. C. C. Rep., 56, followed upon the point that the voluntary reduction of a rate by a carrier will not, without proof that the rate was unreasonable, furnish a basis for reparation.
2. The claim that the fourth section of the act was violated in these shipments not sustained, as the short line made the rate to the competitive point and the defendants had to meet that condition.

L. F. Bird for complainant.

T. J. Norton and *J. L. Coleman* for Gulf, Colorado & Santa Fe Railway Company and Atchison, Topeka & Santa Fe Railway Company.

E. B. Peirce and *Wallace T. Hughes* for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complainant corporation seeks reparation on 39 carloads of coal shipped from Huntington, Ark., and 3 carloads from Bonanza, Ark., to Fostoria, Tex., between June 26, 1907, and June 30, 1908. The rate assessed was \$3.10 per ton. It claims that the rate charged was unreasonable and also alleges discrimination and a violation of the long-and-short-haul clause of the act, in that there was, at the time these shipments moved, a rate of \$2.60 per ton to Cleveland, Tex., a more distant point upon the same line, 6 miles east of Fostoria. Formal complaint was filed June 28, 1909.

The shipments moved from Huntington and Bonanza over the St. Louis & San Francisco to Paris, a distance of 171 miles, and from Paris over the Paris & Great Northern and the Gulf, Colorado & Santa Fe to Fostoria, a distance of 417 miles, or a total of 588 miles. There was in effect from Mansfield, 2 miles from Huntington, and in

the same rate-making group, a rate to Cleveland of \$2.60 via the Rock Island to Hull, thence via the Kansas City Southern to Shreveport, and from this point over the Houston East & West Texas to Cleveland, a distance of 438 miles. This rate via the route named was in effect at the time the Beaumont Division of the Gulf, Colorado & Santa Fe was built through Cleveland, and that road met the rate found in effect at that point. On all the coal traffic in this territory the short-line mileage fixes the rate, and in establishing the \$2.60 rate defendants met the rate found in effect. Fostoria is local to the Gulf, Colorado & Santa Fe, while Cleveland is a junction point of that road and the Houston East & West Texas.

The defendants have in effect a rate of \$3.05 at Rio Vista, the first station south of Cleburne, Tex., a junction point 151 miles south of Paris, and this rate is carried about 100 miles south on the Gulf, Colorado & Santa Fe. From the first station north of Temple, Tex., a junction point on the line of this same carrier, to Somerville, Tex., and reaching as far as Bobbin, on the Beaumont Division of the Gulf line, a rate of \$3.10 is applied to all stations. All these points take higher rates than was applied to Cleveland, and are intermediate to Fostoria and Cleveland. A rate of \$3.35 is applied to all stations on the Beaumont Division of this carrier east of Bobbin, except to junction points where the short-line mileage from the Arkansas coal fields fixes the rate.

Defendants met the competition of the short line at Cleveland, but at other junction points, such as De Ridder, La., and Beaumont, Tex., where lower rates applied via the short line, they did not do so, testifying that the rates did not justify the haul by their longer route.

As above stated, the distance over which the \$3.10 rate applied, from points of origin to Fostoria, is 588 miles, yielding a revenue of 4.8 mills per ton per mile. Since October 1, 1908, at the request of complainant, the carriers have put in the \$2.60 rate at Fostoria, which rate is still in effect. Reparation is sought on shipments that moved prior to the time when this rate was put in, or on the basis of a voluntary reduction by the carriers.

We can not say that the rate which the complainant paid on this traffic for the distances which these shipments moved was so unreasonable as to entitle it to reparation. This case is governed, in that respect, by the principle laid down in *Foster Lumber Co. v. A., T. & S. F. Ry. Co.*, 15 I. C. C. Rep., 56, in which it was held that the voluntary reduction of a rate by a carrier will not, without proof that the rate was unreasonable, furnish a basis for reparation.

As to the claim that the more distant point, had a lower rate than Fostoria, it is not a shipment ever moved

from these coal fields to the former point via the defendant carriers or even by the short-line route of the Kansas City Southern and Houston East & West Texas; and for this reason it is apparent that the complainant has in no way been prejudiced on this account. The determining feature of the case is that the short line from these coal fields made the rate, and the defendants simply met the situation as they found it. This would relieve them from the operation of the fourth section. The complaint will be dismissed.

17 I. C. C. Rep.

No. 698-707. (Sub-No. 93.)
LOUIS WERNER SAW MILL COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted September 16, 1909. Decided January 4, 1910.

1. The rates having been found to be unreasonable, complainant subsequently filed its petition for reparation, but upon its application the case was dismissed without prejudice. Upon motion for reinstatement *nunc pro tunc* it was so ordered.
2. The Commission has no authority to permit a complaint filed within the statutory period to be amended or supplemented so as to bring in claims that were not filed within the time expressly stated in the statute.
3. The Commission has no jurisdiction to deal with complaints for reparation in any way unless filed with or presented to it within the period specified in the statute.
4. The Commission is not vested with the powers of a court of equity to relieve from hardships resulting from improvident arrangements between the parties.

Carter, Collins & Jones for complainant.

Ed. Baxter and Blewett Lee for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is a corporation having its principal office at St. Louis, Mo., and is engaged in manufacturing, selling, and shipping yellow-pine lumber from various stations in the southeastern territory to points mainly in the northern and western states.

On June 28, 1907, complainant filed a petition against the defendant alleging that it had transported shipments of yellow-pine lumber on certain dates therein specified for which an excessive charge of 2 cents per 100 pounds was assessed and collected, and praying that reparation be awarded based upon the exhibits filed. Defendant answered and denied generally all the averments of the petition.

Shortly after the filing of the complaint and answer, upon application of counsel for complainant, this case was dismissed without prejudice by an order of the Commission entered the 8th day of October, 1907.

In September, 1909, complainant, for reasons alleged in its petition, prays that said original complaint be reinstated *nunc pro tunc* as of the 28th June, 1907, the date of filing said original petition, and that additional and supplemental claims evidenced by exhibits filed with the petition for reinstatement may now be filed *nunc pro tunc* as of the 28th June, 1907.

This claim for reparation grows out of proceedings heretofore had before the Commission and in the courts involving the rates upon yellow-pine lumber in the territory mentioned in petition of complainant.

The original petition above mentioned, filed by complainant involved solely an award of reparation or a recovery against the defendant of an amount of money in complainant's favor, and the rights of no other person being directly involved therein, upon its application the case was dismissed without prejudice. This case, therefore, was not heard upon the merits, and in view of the express reservation contained in the order it is clear that the Commission has authority to reinstate this case *nunc pro tunc* upon such a showing as may in its discretion justify such an order.

Complainant seeks, however, to supplement or amend his original petition by setting up new and additional claims against the defendant not embraced in said original proceeding; in other words, the effort is made to bring in additional claims for the first time presented to the Commission and now barred by the lapse of time, and to have these claims considered as if filed at the date of the original petition within the statutory period.

Complainant alleges as grounds for reinstatement that shortly after said original petition was filed defendant agreed that if said proceedings were withdrawn it would take no advantage of the statute of limitations and would treat petitioner's claim just the same as if suit had been brought prior to June 28, 1907, and that it would make restitution on the same basis that restitution should be made to others under like conditions and circumstances whether same shall be by agreement or on account of judgment of the courts, and payment made coeval with such other payments; that relying upon these promises and representations complainant requested that said order be entered dismissing its complaint without prejudice. Subsequently questions arose as to the application of the statute of limitations to petitioner's claim and defendant refuses to pay or adjust said claim without an order of the Commission, to be made after said case is reinstated.

All complaints for the recovery of damages must be filed with the Commission within two years from the time the cause of action accrues, and not after, and we would have no authority to permit a

complaint filed within this period to be amended or supplemented so as to bring in claims that were not filed within the time expressly stated in the statute. The effect of this would be in many instances to defeat the application of the statute of limitations which had already attached as a matter of law. The Commission can not sanction a practice that would permit the revival of claims barred by the statute by subsequently attaching them to other claims presented within the prescribed period.

The defendant company, admitting its promise to complainant not to take advantage of the statute of limitations in this case, and that it induced complainant to dismiss this petition before the Commission by such promise, practically joins in the request that the case be reinstated and that this complainant be allowed to present in connection therewith additional claims of the same character which it is alleged by complainant and admitted by defendant would have been presented to the Commission within the statutory period but for the understanding had between the parties as above stated.

Defendant also in correspondence with the Commission expresses its desire to adjust the claims of such other shippers as have claims of the same character and who filed the same with it, but not with the Commission, within the statutory period for the presentation of claims to the Commission.

The defendant admits that respecting some of these claims it entered into like stipulations, as in the case of complainant in this proceeding before us, while as to still other claims it entered into no specific arrangement of the sort referred to, but received for consideration the claim papers, and has retained them, leaving, as it states, the claimants to fairly infer that their claims would be dealt with on the basis of all others of the same character. The desire of the defendants expressed in its correspondence with the Commission in connection with this case is, that having reached an agreement with the greater part of the claimants for reparation growing out of the litigation referred to, to adjust their claims on the basis of 67 per cent of their provable claims, that the Commission now approve of the inclusion within this agreed basis of settlement, the same being acceptable to the claimants, all of the claims of the classes hereinbefore designated filed with the defendant company as stated but never presented to the Commission by the claimants.

The requirements of the act to regulate commerce are as binding upon the Commission as upon the carriers and their patrons. We can find no authority for approving a refund by the carrier to the shipper merely by virtue of the consent of the carrier. We can lawfully give such approval only upon a state of facts which if shown in a contested case would justify us in ordering reparation notwithstanding

standing the protest of the carrier. We do not understand that the Commission has jurisdiction to deal with complaints for reparation in any way unless filed with or presented to it within the period specified by the statute. The Commission is not vested with the powers of a court of equity to relieve from hardships resulting from improvident arrangements or agreements between the parties.

In any event, however strong may be the equities in favor of these claimants and however commendable may be the desire of the carrier to fulfill its pledges or undertakings, express or implied, and whatever jurisdiction or authority may exist in the courts with respect to claims in this situation, it is clear that this Commission is without jurisdiction or authority in the premises to order or approve reparation with or without consent of the parties.

Upon full consideration of the facts and circumstances appearing, it is the opinion of the Commission that the original petition of complainant should be reinstated *nunc pro tunc* as of June 28, 1907, but without amendment or supplement as to any new or additional claims. It will be so ordered.

17 I. C. C. Rep.

No. 2169.

ROSSIE IRON ORE COMPANY

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY.

Submitted October 26, 1909. Decided January 3, 1910.

Demurrage charges on coal held to have been unlawfully assessed, for the reason that defendant failed to notify consignee of arrival of cars.

G. C. Coffin for complainant.

O. E. Butterfield for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant corporation on February 20, 1909, filed its petition for reparation in the sum of \$348 paid the defendant on June 20, 1907, as alleged demurrage charges on eight cars of coal consigned from various places outside the state of New York to Watertown, N. Y., and subsequently reconsigned to the complainant at Keene's, N. Y. The defendant admits that \$77 of the above amount was collected in error, but maintains that the remaining \$271 was properly assessed.

The complainant operates an iron mine situated about 1 mile north of Keene's, from which it is reached by a spur track. Keene's itself is upon the Syracuse & Rome branch of the defendant, 9 miles south of Gouverneur.

The coal used by the complainant in the operation of its mine is unloaded upon a trestle, having a capacity of three cars, and cars are treated as placed for unloading when put by the defendant upon this trestle. The cars in question arrived at Keene's about the middle of April, and were never switched to the mine of the complainant. The defendant insists that its agent at Keene's notified the superintendent of the complainant's mine of the arrival of the cars and was told, in answer, that the complainant would not receive the same, for which reason no attempt was made to place them for unloading. This the complainant denies.

About June 1 the coal traffic manager of the defendant telegraphed the complainant that these cars were at Gouverneur awaiting disposition. The complainant replied that they were not there by its direction, and that the matter must be taken up with the shippers. About June 10 the cars were received, and the demurrage charges were subsequently paid. The only question in issue was whether the complainant was notified of the arrival of the cars at Keene's and refused to accept the same.

From a consideration of the evidence we fail to find that such notice was given the complainant. We therefore find that under the tariffs of the defendant these demurrage charges were improperly assessed, and that the complainant is entitled to recover the said sum of \$348, with interest. An order will be issued accordingly.

17 I. C. C. Rep.

No. 2327.

F. S. HARMON & COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY
ET AL.

Submitted November 5, 1909. Decided January 3, 1910.

Rate of \$1.75 per 100 pounds, on gocarts, in carloads, minimum 20,000 pounds, from Elkhart, Ind., to Tacoma, Wash., established since the hearing; *Held*, Not to be unreasonable but required to be maintained for two years.

J. E. Belcher for complainant.

George T. Reid for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

On January 13, 1909, the Sidway Mercantile Company of Elkhart, Ind., shipped to complainant, a corporation, at Tacoma, Wash., a carload of gocarts weighing 17,600 pounds on which complainant was charged a rate of \$2.60 per 100 pounds, or a total of \$457.60. On January 18, 1909, a like shipment was made weighing 18,200 pounds on which the same rate was paid, amounting to \$473.20.

This rate of \$2.60 was applied in accordance with defendants' tariffs in effect at the time and a provision in the Western Classification which places gocarts in straight carloads, minimum 10,000 pounds, in second class. At the same time there was another provision in the Western Classification which placed mixed carloads of gocarts and similar articles, minimum 12,000 pounds, no one article to exceed 33½ per cent of the minimum weight, in third class, on which the rate from Elkhart to Tacoma was \$2.20.

The gist of the complaint is that second class rates on straight carloads of gocarts are unreasonable when compared with third class rates on mixed carloads of the same and similar commodities, and particularly in view of the fact that gocarts readily load to twice the prescribed minimum; and reparation was asked for the difference between second and third class rates on the two carloads in question. It was also claimed that the actual weights of these

shipments were considerably less than the weights above stated, but no proof was offered in support of this claim and it was virtually withdrawn at the hearing.

Subsequent to the hearing, and by tariffs effective December 6, 1909, the defendants established a commodity rate on gocarts, in straight carloads, of \$1.75, minimum 20,000 pounds, which is still in effect. There is no evidence to warrant a finding that the present rate is unreasonable. It is a material reduction from the class rates previously applied and lower than the rate contended for in the complaint. It is sufficient to require its maintenance for two years to come.

Nor are we satisfied that complainant is entitled to reparation on the shipments which moved at the higher rates in January, 1909. It appears that until within a comparatively recent period shipments of gocarts in full carloads were of infrequent if not rare occurrence, and it can hardly be affirmed on this record that the classification and rates above mentioned were unreasonable under the commercial conditions which formerly prevailed. Moreover, it is shown that gocarts are now largely made of metal and load readily to the present minimum, whereas they used to be made mostly of wood and probably could not load to anything like 20,000 pounds. Upon all the facts appearing we are constrained to deny reparation on the shipments in question. An order will be entered accordingly.

17 I. C. C. Rep.

No. 2462.

LOCH LYNN CONSTRUCTION COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY.

Submitted November 12, 1909. Decided January 3, 1910.

1. A carrier can not justify unreasonable discrimination between localities in refusing to stop its passenger trains at a particular place on certain days by a contract not to do so. A controversy involving a question of such discrimination must be determined independent of the contract.
2. In the performance of its passenger service a carrier operates in a wide field of reasonable discretion in the adaptation of its service to the infinite variety of circumstances and conditions confronting it. Only such resulting discriminations as are undue and unreasonable are forbidden.
3. The failure of the defendant carrier to stop its passenger trains at Mountain Lake Park, Md., a station on its line, is not found to be unreasonable discrimination in view of all the facts, circumstances, and conditions appearing.

G. M. Alexander for complainant.

Allen S. Bowie for Baltimore & Ohio Railroad Company.

Thomas Ireland Elliott for Mountain Lake Park Association, intervenor.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Deer Park, Mountain Lake Park, and Oakland, in the state of Maryland, and Terra Alta, W. Va., are summer resorts located on the main line of the Baltimore & Ohio Railroad running from Grafton, W. Va., to Cumberland and Baltimore, Md. Deer Park is the most eastern station and is 256 miles from Baltimore. Mountain Lake Park is 3½ miles west of Deer Park, Oakland 2 miles west of Mountain Lake Park, and Terra Alta 10 miles west of Oakland. Deer Park and Mountain Lake Park are small places, each having a summer hotel, and are essentially summer resorts, though each has a few year-around residents. Oakland is the county seat of Garrett County, Md., having a population of 3,000 people, and is a station where the defendant's locomotives stop for water. Terra Alta has a population of about 1,000.

The complainant corporation owns and operates a summer hotel at Mountain Lake Park and complains that, although defendant's passen-

ger trains stop on week days, during the twenty-four hours extending from midnight Saturday to midnight Sunday during the summer months they do not stop at this place, while they stop on Sundays at Deer Park, Oakland, and Terra Alta, and that this is an unjust discrimination which subjects complainant to undue prejudice and disadvantage within the meaning of section 3 of the act to regulate commerce. At Deer Park the defendant carrier owns and operates a hotel, and at Oakland it owns one of the principal hotels, but the latter was not open during the summer of 1909. It is claimed by the complainant that through the failure of defendant to stop its trains on Sundays at Mountain Lake Park it is deprived of guests who go to hotels at stations where the trains do stop on Sundays. The guests of the complainant come largely from Baltimore, Washington, Philadelphia, and New York. The failure to stop trains at Mountain Lake Park compels the guests of the complainant to drive 2 miles between Oakland and that station when they arrive or depart on Sundays.

The defendant while stating that it might be slightly more advantageous to it from a pecuniary standpoint to stop the trains on Sundays, asserts as the reason for its action that an agreement exists between it and the Mountain Lake Park Association by which the railway has obligated itself not to stop its trains at this place on Sundays, in consideration of a deed to the land occupied by its station. The Mountain Lake Park Association, hereinafter called the "association," has intervened and assumes the burden of showing that unjust and undue prejudice and disadvantage does not exist, the defendant expressing itself as neutral and willing to stop its trains at this place if failure to do so is deemed by the Commission to be unjust discrimination.

In the year 1882 the association was incorporated under the laws of the state of Maryland with the view of acquiring a tract of land in Garrett County, which was intended by its incorporators to be set aside as a summer resort for religious and educational purposes. The objects of the association are set forth in article 2 of its charter. This article runs thus:

The object of this association shall be the establishment of a summer resort founded upon Christian principles and designed to afford opportunities for religious and literary instruction and healthful recreation.

Consistent with these objects the intervener had and still has in view the maintenance of the sanctity of the Sabbath. Previous to the time of the incorporation of the intervener other summer resorts founded upon similar principles had been interfered with in their maintenance of the sanctity of the Sabbath by the coming in of outside parties, and for the purpose of precluding the possibility of such and avoiding interruptions which would necessarily be incident to the

bringing in of Sunday excursion trains it entered into an agreement with the defendant on the 6th day of November, 1883, in part as follows:

That the Baltimore & Ohio Railroad Company aforesaid will not stop its passenger trains at or near the station of said railroad company on the land conveyed to the said railroad company by the deed aforesaid (the deed conveying the land for a station) on the Lord's day, commonly called Sunday, unless permission in writing so to do be granted by a vote of the board of directors of the Mountain Lake Park Association of Garrett County; nevertheless such permission may be withdrawn by a vote of the said board of directors upon five days' notice in writing given to the president, or a vice-president, or a director of the said railroad company, it being intended thereby to prevent passengers on the trains of the said railroad company going to or from the grounds of the said Mountain Lake Park Association of Garrett County on the Lord's day, commonly called Sunday.

The consideration for the execution of this agreement, as appears from the agreement itself, was a deed executed simultaneously with the agreement, conveying from the intervener to the defendant a tract of land nearly 2 acres in extent, upon which the Mountain Lake Park Station and additional tracks of the defendant (but not the main line) are now located. At the time of the execution of this deed and agreement the territory between Deer Park and Oakland was, for the most part, wooded land without inhabitants, there being no stations in this space. At present the intervening association owns about 800 acres of land which has been improved. Streets have been laid out and constructed and an electric lighting plant established. The entire place is conducted as a summer resort, the chief feature of which is a chautauqua, religious and educational in character, for which suitable buildings have been erected. Religious and educational conferences and religious camp meetings occur each summer. The association does not own any hotel, but simply halls for public entertainments and one or two cottages for use as residences for persons in charge of the grounds. More than \$300,000 has been invested in improvements. Lots are sold to purchasers and admission is charged to entertainments. No dividends, however, have ever been declared, the surplus, if any there was, having been put back into the establishment.

While it is possible for the association to make profit, its chief objects appear to be religious and educational, and it attracts people to its summer resort who are in sympathy with its purposes, as indicated by the following language found in its circular:

Mountain Lake Park is guarded, as far as character and regulation can do it, from practices that universal Christian sentiment decrees as unsafe and undesirable. Intoxicating liquors may not be bought, sold, or used in boarding houses, stores, or cottages without invalidating the title by which the ground is held. The sanctity of the Sabbath is so maintained that the Mountain Lake Park Sunday is synonymous with all that is desirable in Sabbath.

After the agreement mentioned had been in force twelve years and had become notorious the hotel which the complainant now owns was constructed. In 1901, eighteen years after the agreement had been in force, the complainant purchased this hotel and some real estate, the entire investment amounting, it appears, to about \$60,000. During the fourteen years the hotel has been in existence the trains have not stopped on Sundays, except for a short period during 1905, which stoppage was discontinued by the defendant upon notice from the association. The hotel property is located 1,000 feet south of the Mountain Lake Park Station in the incorporated village of Loch Lynn. To the north of the railroad lies the property of the association, the tracks of the defendant being practically the dividing line between the two. Many of the persons coming to Mountain Lake Park through the influence of the association become patrons of complainant's hotel, and it is asserted that but for the association the complainant's hotel would not be in existence nor would there be any station at this point.

It is shown that a great majority of those moving to and from Mountain Lake Park are brought there through the influence of the association, and its objects and purposes are reflected in the people who, for the most part, use that station.

Clearly such a contract as is here set forth can not in any degree justify undue or unreasonable discrimination. The questions involved, therefore, must be determined wholly independent of the contract. Carriers have the right, and it is their duty in the operation of their roads, reasonably and practically to adjust the same particularly with reference to the number and speed of passenger trains, frequency of stops and the like, with reasonable adaptation to all of the varying circumstances and conditions existing along their lines at different places. There is a large field for the exercise of reasonable discretion respecting the many details of operation and adjustment to varying conditions, particularly with regard to through or limited trains, local or accommodation trains, and stops ranging all the way from what is suitable and reasonable with respect to mere flag stations, where upon signal from a passenger a local or an accommodation train may stop, up to the fastest trains for long distances in through travel stopping only at important cities or junction points.

Respecting discriminations in these matters as between places the carriers must have regard to the communities as such rather than the special interests of particular individuals at these places. It follows that in the intricate details of passenger service of a carrier adapted to a great variety of circumstances and conditions affecting the different situations which it must confront, numerous and various

discriminations necessarily result, but only such as are unreasonable and unjust are forbidden, and those within reason are not unlawful.

We do not find that the failure of the defendant company to stop its passenger trains on Sundays at Mountain Lake Park at the present time in view of all the facts, circumstances, and conditions presented in this case, is undue or unreasonable discrimination against that locality or the complainant. The complaint will therefore be dismissed.

Nos. 2619 and 2620.

POPE MANUFACTURING COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted October 1, 1909. Decided January 4, 1910.

1. The petitioner's claim that it ordered cars of definite length for the shipments involved in these complaints is denied by the defendant, and the conflict of testimony is such as to give the Commission no clear ground for holding that such demands were in fact made.
2. In view of the confusion that not infrequently follows the absence of a written record of a demand for a car of specific length for a particular movement, shippers are cautioned to give their orders for equipment in writing, or promptly to confirm the orders in writing when given verbally.

George Pope for complainant.

William Ainsworth Parker and *W. Clinton M'Sherry* for Baltimore & Ohio Railroad Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

As these two complaints involve the same general facts, they were heard together and may be disposed of in one report.

In the first case it appears that on May 16, 1908, the complainant shipped three uncrated automobiles without tonneaus from Hagerstown, in the state of Maryland, to Marinette, in the state of Wisconsin, for which it is alleged in the petition a car 36 feet long with an

end-door opening was ordered. Instead of furnishing a car of that size the principal defendant supplied the complainant with a car 49 feet 6 inches in length. Charges were collected at destination in the sum of \$160.27, and this is claimed to have been unreasonable and excessive under the circumstances of the case. The published minimum weight for a 36-foot car was 10,000 pounds, but the charges seem to have been computed with some relation to the minimum weight applicable to the larger car used for the movement. The exact factors, however, that entered into the amount collected are not explained of record. For the car used and the commodity transported the published tariffs of the defendants provided the following minimum weights and rates:

Hagerstown, Md., to Milwaukee, Wis., minimum 18,000 pounds, rate 67 cents	\$120. 60
Milwaukee to Marinette, Wis., minimum 18,900 pounds, rate 40 cents ..	55. 60
	<hr/> 176. 20

Upon the basis of these rates and weights there was an apparent undercharge on the shipment of \$15.93.

While it is definitely alleged in the complaint that a 36-foot car was ordered for the movement, the testimony on that point is not conclusive. The one witness brought forward by the complainant admitted that no specific order was given for a car of that length, and the allegation is supported only by his statement that there was "an understanding" with the principal defendant that 36-foot cars with side doors were to be furnished in all cases "unless otherwise ordered." On the part of the defendant it is denied that there was a specific understanding of that nature between the local agent of the defendant and the agent of the complainant at Hagerstown; this testimony is qualified, however, by the admission of the local agent that there might have been some such understanding with his predecessor. At another point in his testimony the complainant's agent seems to have admitted that he did not specify a car of a particular length or demand a car with an end-door opening. His position seems to be that he made requisition on the defendant for a car for a shipment of three automobiles. He also states that when the larger car was placed for loading he got into communication by telephone with the local agent of the defendant and asked whether that car should be used for the shipment, and in reply was told to "use it."

There were several 36-foot cars then in the defendant's yards at Hagerstown, any of which was available and could have been placed on complainant's siding in half an hour had a car of that specific size been ordered. The record indicates that no objection was made by the complainant to the larger car. The three automobiles

could have been loaded into a 36-foot car, and cars of that size had been used by the complainant for such shipments. It also appears that cars of 49 feet 6 inches in length were used for the shipment of five automobiles.

The inference to be drawn from the whole record is that the complainant's agent knew the minimum applicable to the larger car and that the defendant's agent knew that three automobiles could be loaded in the smaller car. The only light on the conflict in the testimony is the fact that the defendant's billing shows a weight of 10,000 pounds, the minimum applicable to the smaller car, the actual weight of the shipment being about 5,000 pounds; but this is explained by the local agent as an error probably due to the rush of business in hand at the time the billing was issued.

The occasion for the second of the above-entitled complaints was the complainant's shipment on May 20, 1908, of three automobiles from the same point of origin to Blairstown, in the state of Iowa. The car actually furnished was 49 feet 6 inches in length. Charges were collected at destination in the sum of \$203.40, but from the record we are unable to determine on what basis they were computed. From an examination of the tariffs on file here the legal rates and minimum weights applicable to the shipment in the equipment used were apparently as follows:

Hagerstown, Md., to East Clinton, Mo., minimum 18,000 pounds, rate	
80 cents-----	\$144. 00
East Clinton, Mo., to Blairstown, Iowa, minimum 13,900 pounds, rate	
34 cents-----	47. 28
	<hr/>
	191. 28

If this basis for the through charges is correct, there was an overcharge on the shipment of \$12.14.

The evidence with respect to the size of the car ordered for this shipment differs only in one respect from the evidence in the first complaint, namely, that the petitioner did actually ask for an end-door car. The length of the car was not specified, but the complainant's agent explains that he was expecting a 36-foot car to be furnished because he gave notice that a car was wanted for a shipment of three automobiles. Official records seem to show that there are in the United States but 172 cars of that length with end doors, and they are owned by the New York, New Haven & Hartford Railroad Company. None of those cars was on the lines of the principal defendant at that time, and the complainant's agent admitted that he could not remember ever having heard of or having seen a 36-foot car with an end door. It may be added that when the complainant ordered this end-door car the carrier's agent stated that there might be some difficulty in finding such equipment, but the complainant's

agent replied that if there was any additional expense it would be charged to the consignee.

The conflict in the testimony is such as to leave us no clear ground upon which reparation may be granted in either case in accordance with the prayer of the petition. The one definite thought suggested by our consideration of the record is that when shippers order cars for particular movements in which dimensions are important because of the graded minimum weights usually applicable to cars of different lengths, the order should be in writing, or if not actually given in writing should be promptly and definitely confirmed in writing. Ordinary prudence requires that course. Confusion not infrequently follows the absence of such a record of the shipper's demand for a car of specific length, and where there is a conflict of recollection as to the exact terms of a verbal order the Commission rarely finds in the record a strong, clear ground upon which to resolve it. In this record we find no basis for an order for relief. While a long course of dealing between the shipper and the carrier, involving daily or frequent shipments of automobiles from a definite station, might so familiarize the carrier's agents at that point with the requirements of the shipper in the way of equipment as to justify us in holding that an order for a car for three automobiles was sufficient to charge the carrier with notice that a 36-foot car was wanted, no such foundation is made on the record here to warrant the disposition of these complaints on any such principle.

An examination of the current tariffs of the principal defendant indicates that they do not comply with Rule 66 of Tariff Circular 17-A requiring carriers to publish a rule providing for the application of the minimum weight and rate on the car ordered by the shipper when, for the convenience of the carrier, a larger car is furnished and the load actually moved in the larger car could have been put into the smaller car. This omission in its tariffs ought to be promptly corrected. With respect to the undercharge and overcharge, which seems to exist, as above explained, adjustment must be made in accordance with the legally published rates, and when this shall have been done the Commission ought to be advised, so that an order of dismissal may be entered herein.

No. 2453.
CALIFORNIA FRUIT GROWERS' EXCHANGE
v.
SANTA FE REFRIGERATOR DESPATCH COMPANY
ET AL.

Submitted July 3, 1909. Decided January 4, 1910.

Defendants required to maintain in their refrigeration tariffs for two years a rule providing that no charge over the regular refrigeration rate will be made on cars iced before loading at regular icing stations in California and Arizona and set for loading inside switching limits at such points.

Levy Mayer and Frank James for complainant.
Robert Dunlap and T. J. Norton for defendants.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complainant seeks to recover reparation for the collection of alleged unreasonable refrigeration charges on some 161 carloads of citrus fruit moving from Los Angeles, Cal., to various eastern points during May, June, and July, 1907. At the time of shipment defendants' refrigeration tariff contained the following provision:

(a) When empty cars are ordered to loading points under ice, an additional charge of \$15 per car will be added to the above rate.

As indicated this charge of \$15 per car was exacted in addition to the regular refrigeration charges for the through movement.

It appears that this charge was intended to apply on cars placed for loading at so-called "outside loading stations," for such cars must not only be iced before loading but, after loading is completed, must be hauled to an icing station and reiced before the eastward movement is begun. In the case of shipments such as those giving rise to this complaint second icing is unnecessary; cars are placed under ice at the icing station, loaded with precooled fruit, and immediately forwarded without additional refrigeration service. Defendants admit by their answer that it was not their intention to exact the additional charge under the circumstances surrounding these shipments.

Effective May 28, 1908, the refrigeration tariff was amended by adding the following note:

Cars iced before loading at regular icing stations in California and Arizona, and set for loading inside switching limits at such points, are not included under the rule. No charge over the regular refrigeration rate will be made on such cars.

Under the tariff as now amended, therefore, the additional refrigeration charge of \$15 per car would not be exacted under circumstances similar to those set forth in this complaint.

Defendants concede the justice of the complaint and stipulate that the case may be determined upon the pleadings.

We find that the additional refrigeration charge of \$15 per car as collected by defendants on these shipments was unjust and unreasonable, and that complainant is lawfully entitled to the refund of the charges so collected. An order will be issued requiring defendants to maintain in their refrigeration tariffs for a period of not less than two years a rule providing that no charge over the regular refrigeration rate will be made on cars iced before loading at regular icing stations in California and Arizona and set for loading inside switching limits at such points. Reparation will be awarded upon presentation of evidence of the payment of charges.

No. 2288.

FARMERS' COOPERATIVE & EDUCATIONAL UNION

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

No. 2562.

ASTORIA CHAMBER OF COMMERCE

v.

SAME.

Submitted December 2, 1909. Decided January 4, 1910.

The Commission is asked to establish joint through rates on grain and grain products from producing points in Washington, Oregon, and Idaho to Astoria, Oreg., the same as the rates to Portland, Oreg., and Seattle and Tacoma, Wash.; *Held*, That the fact that defendants have provided themselves with tracks, warehouses, wharves, etc., for handling export grain at Portland, Seattle, and Tacoma does not impose upon them the obligation of duplicating those facilities at Astoria; *Held, further*, That defendants' rates on grain and grain products from points in Washington and Idaho to Astoria are unreasonable *per se*, and that rates shall be established to Astoria not more than 4½ cents per 100 pounds higher than the rates to Portland.

Frederick H. Murray for complainants.

F. V. Brown and *F. G. Dorety* for Great Northern Railway Company.

Charles H. Cary and *James B. Kerr* for Spokane, Portland & Seattle Railway Company and Astoria & Columbia River Railroad Company.

W. W. Cotton for Oregon Railroad & Navigation Company.

George T. Reid for Northern Pacific Railway Company.

J. C. Flanders for Portland Chamber of Commerce, Intervener.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

These complaints involve the same question, were considered together in hearing and in briefs, and will be disposed of in one report.

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Astoria, Oreg., a city of 15,000 population, is located on the Columbia River near its mouth, about 10 miles from the ocean. Portland, Oreg., with a population estimated at from 250,000 to 300,000, is located on the Willamette River near its confluence with the Columbia River, is at the head of navigation of these rivers so far as seagoing vessels are concerned, and is about 100 miles eastward from Astoria.

On commodities generally, shipped to or from points lying eastward of a line drawn, roughly speaking, from Winnipeg to Denver, Astoria is granted the same rates that apply to the so-called North Pacific coast terminals, Portland, Oreg., and Seattle and Tacoma, Wash.

In the states of Washington, Oregon, and Idaho there are important grain-growing sections principally devoted to raising wheat. The crop for the present year is estimated in the record as 60,000,000 bushels, this being divided, 33,000,000 bushels for Washington, 15,000,000 bushels for Oregon, and 11,500,000 bushels for Idaho.

This wheat belt is pierced by numerous lines of the Great Northern, Northern Pacific, Spokane, Portland & Seattle, and Oregon Railroad & Navigation Company systems. Many important shipping points are reached by two or more of these lines.

The western terminus of the Oregon Railroad & Navigation Company is at Portland, Oreg.; that of the Great Northern at Seattle, Wash.; while the Northern Pacific reaches Seattle and Tacoma and has a line from thence south to Portland. The Spokane, Portland & Seattle Railway, recently constructed, has a direct line from Spokane, where it connects with both the Northern Pacific and Great Northern, to Portland. This line is in direct competition with the Oregon Railroad & Navigation Company's line from Spokane to Portland. The Astoria & Columbia River Railroad extends from Portland 100 miles to Astoria. Its stock is owned by the Spokane, Portland & Seattle Railway, the stock of which in turn is owned jointly by the Northern Pacific and Great Northern railways.

From all competitive points in the wheat belt, and from certain zones therein in which the rates are blanketed, the rates on grain are the same to Portland, Seattle, and Tacoma, from each of which places wheat is exported. The rates to Astoria are made by adding to the rate to Portland the Astoria & Columbia River Railroad's rate of 10 cents per 100 pounds.

Complainant in case No. 2288 is an association of farmers, who have undertaken, through a cooperative plan, to market their own grain. The union owns about 120 wheat warehouses, scattered throughout the wheat belt, and it is declared to be its purpose and intent to secure still more, until it is in a position to thus handle substantially all of the products of its members. It asserts the belief that if given the same rate to Astoria as to Portland it could secure

cheaper transportation rates to the final destinations in foreign countries and so benefit its members. Complainant in case No. 2562 is an association of the men in business and commercial enterprises at Astoria.

It is alleged that the rates on grain, grain products, hay, and other farm products to Astoria are unreasonable, relatively and *per se*, and that the present adjustment is unduly preferential against Astoria and in favor of Portland, Seattle, and Tacoma. The Commission is asked to establish joint through rates from points of origin in the wheat belt to Astoria the same as to Tacoma, Seattle, and Portland.

Joint through rates from the grain belt are now in force to Everett and Bellingham, on Puget Sound. The rates on grain to Bellingham are 2½ cents per 100 pounds above the rates to Seattle, Tacoma, and Portland. The rates to Everett are the same as to Seattle, Tacoma, and Portland. Grain reaching Seattle via the Great Northern must pass through Everett.

The distances via direct lines from the parts of the wheat-growing sections to Seattle and to Astoria do not differ greatly. The distance to Astoria, however, is somewhat greater in practically every instance. The direct lines of the Northern Pacific and the Great Northern to Seattle and Tacoma are across the Cascade Mountains. They have a longer low-grade route by using the Spokane, Portland & Seattle to Vancouver, Wash., and the Northern Pacific thence to Tacoma and Seattle. The direct route to Astoria is down and along the Snake and Columbia rivers. No railroad reaches Astoria except the Astoria & Columbia River Railroad, and no grain could reach that point all-rail except by passing through Portland. The Oregon Railroad & Navigation Company has no line to Tacoma or to Seattle, although it is understood that arrangements are about perfected for it to reach those points over joint track arrangements with the Northern Pacific.

Grain was exported from Portland before any railroad was constructed to that point. The Oregon Railroad & Navigation was the first line from the wheat belt to Portland and the first through line from the east. Prior to 1887 the Northern Pacific had its line from the east through Spokane to a connection with the Oregon Railroad & Navigation at Wallula Junction. In that year its line over the Cascade Mountains to Tacoma was completed. In 1893 the Great Northern completed its line to Seattle. The Northern Pacific and the Great Northern desired to build up ports and commercial centers at Tacoma and Seattle, and they established at those points the same rates that were applicable to Portland. The Astoria & Columbia River road was completed about 1890, and it

is therefore seen that Portland was an important grain-exporting port before any railroad reached Astoria.

The business portion of the city of Astoria is largely built on piling. Much testimony was offered as to available room for suitable facilities for an export port, from which it appears that trackage room would not be available immediately at Astoria, but that a reasonable amount would be available between Astoria and the ocean on what is commonly termed Warrenton Peninsula. A large portion of the present main track and sidings of the Astoria & Columbia River Railroad in Astoria rests on piling.

The Oregon Railroad & Navigation, the Northern Pacific, the Great Northern, and the Spokane, Portland & Seattle roads have their respective tracks, warehouses, and wharves at Portland, Seattle, and Tacoma for the purpose of handling this export grain. The warehouses are either owned by grain exporters or are owned by the railroads and leased to such exporters. Such facilities are not available at Astoria, and if the defendants were to arrange to haul large quantities of export grain to Astoria it would be necessary to construct tracks, warehouses, wharves, and other necessary facilities for handling it.

The grain rates from producing points in Washington to Seattle and Tacoma were, until June, 1909, fixed by statute of the state of Washington, and are now subject to regulation by the Washington state commission. In fact, important reductions therein have but recently been made in accordance with the order of that commission. Necessarily, if the Oregon Railroad & Navigation Company desires to participate in hauling grain from producing points in Washington to a port for export it must make as low rates to Portland as are fixed by the state of Washington to Seattle or Tacoma. The rates from producing points in Oregon to Portland are in control of the Oregon commission and have recently been reduced. If the Northern Pacific and Great Northern desire to haul grain from producing points in Oregon to a port for export they must make as low rates to Seattle or Tacoma as the state of Oregon makes to Portland. All of the grain raised in Washington could be taken to Seattle or Tacoma, and all of the grain raised in Oregon could be taken to Portland without interstate movement.

It was alleged in complaint that the railroads unduly favored Portland against Astoria by paying the towage and pilotage on grain vessels between Astoria and Portland. It was, however, shown at the hearing that while some such practice had obtained in years gone by, none such now exists.

The principal witness for complainant in case No. 2288 was of opinion that in order to export grain from Portland it was necessary

for a vessel to partly load at Portland and for part of her cargo to be taken to Astoria on lighters and be there taken on board. The record, however, shows that that practice was discontinued years ago, and that any vessel which can load at Astoria can load to the same depth at Portland.

Intervener, the city of Portland, has done much to improve navigation on the Columbia River. A municipal corporation known as the Port of Portland has been established by law. It has power to levy taxes upon the property in a large portion of Multnomah County, Oreg., which district embraces all of the city of Portland, for the purpose of deepening the river and operating pilotage and towage service between Portland and the sea, and for certain other purposes. Through this means the city of Portland has expended some \$2,000,000 in improving the conditions of navigation between Portland and Astoria.

It is shown that steamship charter rates from Portland and from Astoria to foreign ports are and for a long time have been the same. There is no evidence that grain would be taken by vessel from Astoria cheaper than from Portland, except one hearsay statement that a certain vessel owner had said that he would be willing to take it at a somewhat lower figure. It is shown that between 1903 and 1907 a differential existed on sailing vessels in favor of the Puget Sound ports as against Portland, which was principally because of the compulsory pilotage over the bar at the mouth of the Columbia River and the cost of discharging ballast in the river, where it must be taken from the ship in lighters, whereas on the Sound the water is so deep that vessels are permitted to dump ballast from the ship's side. The compulsory pilotage has been abolished, and the commercial interests at Portland pay the cost of hauling the ballast from the ship's side. The differential therefore no longer exists. But while these conditions did exist they operated against Astoria the same as against Portland.

It is alleged in complaint that by virtue of its location the city of Astoria is entitled to the same rate adjustment that is given to the other so-called Pacific Coast terminal cities. Does the fact that defendants Great Northern, Northern Pacific, Spokane, Portland & Seattle, and Oregon Railroad & Navigation companies have, under the circumstances recited, established arrangements for exporting grain at Portland, Seattle, and Tacoma impose upon them the obligation of duplicating such facilities at Astoria? If so, would not the obligation also extend to any other point on the Columbia River between Portland and the sea, and to any point on Puget Sound between Blaine and Olympia? We do not think such obligation rests upon

these defendants or that we can reasonably or lawfully impose it upon them.

In *Commercial Club of Santa Barbara v. Southern Pacific Co.*, 12 I. C. C. Rep., 495, in discussing the fact that ocean-going vessels did not take and discharge cargoes at Santa Barbara, it was said:

Whatever the cause, it is undisputed on the record that eastern traffic destined to Santa Barbara and coming by boat is either unloaded at San Diego or at San Francisco, and thence transshipped either by rail or water carrier. There is therefore no real, potential, compelling competition between the trans-continental rail carriers and those carrying similar traffic by water which affects directly the rail rates obtaining at Santa Barbara.

Again, in the same case, it was said:

While, therefore, such conditions do not obtain at Santa Barbara as would justify this Commission in requiring the installation of terminal rates based upon the existence of actual water competition, she is not without the advantage of her proximity to points where such rates do obtain, and her position upon the ocean directly and beneficially affects the rail rates which she secures.

These suggestions apply with equal force in the instant cases.

The rates on grain, grain products, hay, etc., from the grain fields to Astoria are complained of as unreasonable *per se*. They are, as has been seen, made in combination on Portland. The issue presented by complainants and tried in these cases was that of rates on grain and grain products. No allegation is made that the rates from the grain fields to Portland are unreasonable, but emphasis is laid upon the alleged unreasonableness of the addition of 10 cents per 100 pounds for the additional haul from Portland to Astoria, a distance of 100 miles. Comparisons are made with the rates of defendants for hauling grain like distances between other points on their lines in Washington, Idaho, and Oregon, and also with the addition of 2½ cents to the Seattle rate to make the rate to Bellingham. It appears that 2½ cents also is added to the Seattle rate to make the rate to Sumas, Wash. The Great Northern, as has been seen, must haul grain to Seattle through Everett, and it must also haul it through Everett to Bellingham. The distance from Everett to Bellingham is about 30 miles greater than from Everett to Seattle. Sumas is about 23 miles beyond Bellingham. The Northern Pacific hauls grain to either Tacoma or Seattle through Auburn Junction; and if it hauls any to Everett, Bellingham, or Sumas it must necessarily do so at the rate fixed by the shorter line.

Complainant argues that inasmuch as the Northern Pacific and Great Northern own the stock of the Spokane, Portland & Seattle Railway, which latter owns the stock of the Astoria & Columbia River Railroad, the entire line to Astoria in fact and effect is and should be treated as a continuous line of the Northern Pacific and the

Great Northern. We are not able to accept the full measure of this contention. In *Interstate Commerce Commission v. Stickney and Smith, receivers*, decided November 29, 1909, the Supreme Court of the United States said:

The Union Stock Yards Company is an independent corporation and the fact, if it be a fact, that most or even all of its stock is owned by the several railroad companies entering into Chicago does not make its lines or property part of the lines or property of the separate railroad companies.

In making the through rates from the grain fields to Astoria, defendants add to the rate to Portland for the additional haul of 100 miles to Astoria, 10 cents per 100 pounds. That is equivalent to \$2 per ton or 2 cents per ton per mile—an abnormal rate for the transportation of grain, abnormally high as compared with defendants' rates for like service elsewhere, and its use in constructing rates on through shipments results in unreasonable rates from the grain fields to Astoria.

A full hearing has been had in these causes, and upon a full consideration of the testimony and the record we are of the opinion that defendants' present rates on grain and grain products from points on their lines in Washington and Idaho to Astoria, Oreg., are unreasonably high, and that they are unreasonably high because of the addition of 10 cents per 100 pounds as a part of the through rate for the haul from Portland to Astoria. We are further of the opinion that defendants should be required to establish rates on through shipments of grain and grain products from said points of origin in the states of Idaho and Washington to Astoria, Oreg., not more than 4½ cents per 100 pounds higher than the rates contemporaneously in force from the same points to Portland, Oreg. Our order will not specifically require the establishment of joint through rates to Astoria. We have made it clear where the unreasonableness in the existing rates lies. We leave it to defendants to establish the rates herein prescribed by adopting joint through rates to Astoria, by establishing proportional rates, applicable to the through interstate movement, from Portland to Astoria, or in such other way as may properly effect the change required. If, however, defendants are unable to agree upon the manner of constructing the rates herein ordered, or upon the divisions of such rates, the Commission will enter such supplementary order as may be necessary.

An order in conformity with these views will be entered.

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Nos. 1514 and 1523.

OTTUMWA COMMERCIAL ASSOCIATION

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted March 13, 1909. Decided January 4, 1910.

1. The through charges under the class rates from points east of the Indiana-Illinois state line to Ottumwa, in the state of Iowa, found to be unreasonable and excessive; it is also found that the through charges are unreasonable and excessive because of the excessive proportional class rates applicable from the Mississippi River crossings of the defendants on through movements to destination. Defendants are therefore required to reduce the latter rates for the future.
2. *Greater Des Moines Committee v. C., R. I. & P. Ry. Co.*, 17 I. C. C. Rep., pp. 54 and 57, cited and followed.

Guernsey, Parker & Miller for complainant.

Chester M. Dawes and Hale Holden for Chicago, Burlington & Quincy Railroad Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

W. C. Maxwell and N. S. Brown for Wabash Railroad Company.

Hazen I. Sawyer for Manufacturers & Shippers Association of Keokuk, Intervener.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In the first of these two proceedings is attacked the reasonableness of the defendants' proportional rates from their respective Mississippi River crossings to Ottumwa, in the state of Iowa, applicable on through traffic originating at points east of the Indiana-Illinois state line. The rates involved in the second complaint are the through class rates from Chicago to Ottumwa. Besides the class rates mentioned, certain commodity rates are also brought in issue. We do not, however, deem it necessary to discuss the latter rates in this report, but shall look to the carriers to adjust them in general harmony with the findings hereinafter made. The two complaints were
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consolidated and heard as one proceeding. The issues raised are substantially the same as those presented in docket Nos. 1231, 1289, and 1285 (*Greater Des Moines Committee, v. C., R. I. & P. Ry. Co., ante*, pp. 54 and 57), the principal difference being that Des Moines is the point of destination in the cases just referred to, while in this proceeding Ottumwa is the destination. The disposition made of those cases seems logically to require findings and an order here along the same general lines.

The proportional rates of the defendant carriers applicable on this through traffic from the east are as follows:

Proportional rates to Ottumwa.

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New York (Group 1).....	32	27.5	22.5	17	12	13	11.5	10.5	9.5	8
Syracuse (Group 2).....	30	25.5	21.5	16	11.5	12	11.5	10.5	9.5	8.5
Pittsburg (Group 3).....	35.5	30.5	25	18.5	11	14	12.5	11.5	10.5	8.5
Columbus (Group 4).....	36	31	25.5	19.5	11	14.5	13.5	12.5	11	9
Saginaw (Group 5).....	30	26.5	21.5	16	10.5	12	10.5	9.5	8	5
Detroit (Group 6).....	32	29.5	24.5	19	13	14	13	12	11	8
Grand Rapids (Group 7).....	32	29.5	24.5	19	13	14	13	12	10	7
Indianapolis (Group 8).....	37	33.5	27.5	21	13	15.5	14	13	11	8
Muncie (Group 9).....	32	29.5	24.5	18.5	12	13.5	12	11	10	8
Cincinnati (Group 10).....	37	34.5	27.5	21	14	16	15	13	11	10

Upon the evidence and on the general basis of the conclusions reached in the *Greater Des Moines cases* we find that the combination through class rates from points east of the Indiana-Illinois state line to Ottumwa, in the state of Iowa, are unreasonable and excessive, and that this unreasonableness exists in the aforesaid proportional rates applying on the portion of the haul west of the Mississippi River. We further find that for the future reasonable proportional rates from the respective Mississippi River crossings of the defendants to Ottumwa, applicable on through traffic from the territory in question, will not exceed the amounts set forth in the following table:

Group No.	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
1 (including New York).....	28	24	19½	15	10½	11½	10	9	8½	7
2 (including Syracuse).....	26½	22½	19	14	10	10½	10	9	8½	7½
3 (including Pittsburg).....	31	26½	22	16	9½	12½	11	10	9½	7½
4 (including Columbus).....	31½	27	22½	17	9½	12½	12	11	9½	8
5 (including Saginaw).....	26½	23	19	14	9	10½	9	8½	7½	4½
6 (including Detroit).....	28	26	21½	16½	11½	12½	11½	10½	9½	7
7 (including Grand Rapids).....	28	26	21½	16½	11½	12½	11½	10½	9½	6
8 (including Indianapolis).....	32½	29½	24	18½	11½	13½	12½	11½	9½	7
9 (including Muncie).....	28	26	21½	16	10½	12	10½	9½	9	7
10 (including Cincinnati).....	32½	30	24	18½	12½	14	13	11½	9½	9

The complainant's prayer for the establishment of joint through rates from the points of origin involved to Ottumwa will be denied.

In complaint No. 1523 the through class rates from Chicago to Ottumwa are attacked as unreasonable, not as compared with the rates to Minneapolis and St. Paul, as was the case in docket No. 1285, referred to above, but as compared with the present class rates from Chicago to Burlington, and as compared with the rates previously in effect to Ottumwa. The rates attacked in this complaint are as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rates....	61	50	36	26	21	26	21	17	15	12

On the record, and with due regard for the rates established by order of the Commission from Chicago to Des Moines in the complaint just mentioned, we find that the first and second class rates from Chicago to Ottumwa are excessive and unreasonable, and for the future should not exceed 56 cents and 46 cents, respectively.

An order will be entered in accordance with these findings.

No. 2344.

WHITE BROTHERS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 11, 1909. Decided January 10, 1910.

Defendants' charge of 85 cents per 100 pounds for the transportation of one carload of hardwood lumber from Black Rock, Ark., to San Francisco, Cal., found unreasonable to the extent that it exceeded 75 cents, and complainant awarded reparation.

Lester G. Burnett and J. O. Bracken for complainant.

T. J. Norton, E. W. Camp, and E. B. Peirce for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This is a complaint that the charge by defendants of 85 cents per 100 pounds for the transportation of a carload of hardwood lumber from Black Rock, Ark., to San Francisco, Cal., was unreasonable to the extent that it exceeded 75 cents. Reparation is asked.

We find that complainant on March 26, 1908, shipped from Black Rock to San Francisco via the lines of the St. Louis & San Francisco Railroad Company and Atchison, Topeka & Santa Fe Railway Company a carload of hardwood lumber, weighing 52,880 pounds, for the transportation of which 85 cents per 100 pounds, amounting to \$449.47, was charged and collected by the carriers from the complainant.

It appears that the shipment was made from Clover Bend, Ark., to Black Rock via a boat line not a party to the through rate. On the billing submitted in evidence it does not appear what the charges of the boat line were, but the shipment was received by the defendant, the Frisco, at Black Rock, and the full and regularly established rate of the defendants from that point to destination was charged and collected, as above stated.

The questions here involved are identical in all respects with those involved in a number of similar complaints disposed of by the report and order of the Commission in the case of *J. C. Kindelon, doing business under the name of the Standard Hardwood Lumber Company, v. So. Pac. Co.*, 17 I. C. C. Rep., 251. The facts bearing upon the question of the reasonableness of the rate complained of in this case and our conclusions thereon are the same as found and stated in that case.

We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation from the defendants in the sum of \$52.88, with interest.

An order will be entered accordingly.

No. 1899.
RAILROAD COMMISSION OF TENNESSEE
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted December 9, 1909. Decided January 4, 1910.

Covington, Brownsville, and Jackson, in Tennessee, are situated upon a line drawn east from the Mississippi River, Covington 16 miles from the river, Brownsville 20 miles east of Covington, and Jackson 25 miles east of Brownsville; the present rate on compressed cotton to New England mills is 60½ cents from Covington, 60½ cents from Brownsville, and 70 cents from Jackson; upon complaint that this adjustment of rates is an unjust discrimination against Jackson; *Held*, That, looking at the entire situation, the present adjustment of rates between Brownsville and Jackson unduly discriminates against Jackson, and that the rate to New England destinations from Jackson ought not to exceed that from Brownsville by more than 5 cents per 100 pounds.

B. A. Enloe, Harvey Hannah, W. A. Guild, and Fonville & Holland for complainant.

Sidney F. Andrews and Ed. Baxter for Atlantic Coast Line Railroad Company; Georgia Railroad; Illinois Central Railroad Company; Nashville, Chattanooga & St. Louis Railway; Norfolk & Western Railway Company; Ocean Steamship Company of Savannah; Old Dominion Steamship Company; Seaboard Air Line Railway, and Receivers thereof; Southern Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; and Mobile & Ohio Railroad Company.

W. G. Dearing and W. A. Northcutt for Louisville & Nashville Railroad Company.

Sidney F. Andrews and E. G. Buckland for Central New England Railroad Company; Hartford & New York Transportation Company; New York, New Haven & Hartford Railroad Company; and New England Navigation Company.

S. R. Prince for Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Covington, Brownsville, and Jackson, all in the state of Tennessee, are situated upon a line drawn east from the Mississippi River.

Covington is about 16 miles from the river, Brownsville 20 miles east of Covington, and Jackson 25 miles east of Brownsville. The region surrounding these three towns is a cotton-producing country, and a cotton compress is located at each one of these three points.

The present rate on compressed cotton to New England mills is 60½ cents from Covington, 60½ cents from Brownsville, and 70 cents from Jackson. This complaint, which is brought by the Railroad Commission of the state of Tennessee, alleges that this adjustment of rates is an unjust discrimination against Jackson as compared with Covington and Brownsville. The complaint contains an allegation that the rate from Jackson is unreasonable; but the complainant stated at the opening of the hearing that the only objection was to the relation of the rates, and that if the rates from Covington and Brownsville were advanced, this would remove the cause of complaint.

One line of the Illinois Central runs from Memphis north through Covington and is the only railroad which serves that point.

Brownsville is upon the Louisville & Nashville, which also extends from Memphis north and is the only railroad serving that point.

Jackson is served by a branch of the Illinois Central, which unites with the line passing through Covington at Fulton, 64 miles north of Jackson. It is also upon the Nashville, Chattanooga & St. Louis, which crosses the Louisville & Nashville at Paris, north of Jackson, and upon the Mobile & Ohio.

The rates complained of are to New England mills, and cotton for these destinations is transported by the various carriers above named to the Ohio River, where it is taken by other railroads, defendants to this proceeding, by different routes to destination. The rates are in all cases joint through rates.

Covington is 38 miles north of Memphis. The present rate from Memphis to New England points is 47½ cents; the local rate from Covington to Memphis 20 cents per 100 pounds on compressed cotton. Evidently, cotton grown in the vicinity of Covington will be brought from the farm to the compress at Covington or at Memphis, according as the lowest rate of transportation to destination can be secured. If the cost of carriage to the compress and freight from the compress is less through Memphis, then the cotton will reach Memphis, although it may be grown in close proximity to Covington. The compressed cotton will also move through Memphis if that be the cheapest route.

The testimony shows that uncompressed cotton grown in the vicinity of Covington can be, and is, transported by water from various Mississippi River landings to Memphis, and it also appears that compressed cotton has been hauled by wagon from Covington to Memphis against the present local rate. The Illinois Central Railroad claims that the 60½-cent rate established by it at Covington is necessary to meet these

competitive conditions, and we are of the opinion that this position is correct.

If the rate to market from Brownsville exceeds the rate from Covington, it is evident that cotton grown in territory intermediate between those two compresses will seek the compress at Covington instead of that at Brownsville. When the compress was established at Brownsville in 1905, the Louisville & Nashville, for the purpose of putting that point upon an equality with Covington, established the same rate, and has since maintained that rate. It insists that this must be done in order to enable it to secure an equal share of the competitive cotton between Brownsville and Covington; and this is evidently true.

The same situation exists at Jackson with respect to Brownsville which obtains at Brownsville with respect to Covington. If a higher rate is maintained from Jackson than from Brownsville, cotton from intermediate territory will be marketed at Brownsville and not at Jackson, and the testimony shows that cotton from this intermediate and competitive territory between Brownsville and Jackson goes at the present time largely to Brownsville. The same reasons which require a reduction in the rate at Brownsville to meet competition at Covington require a reduction at Jackson to meet the competition at Brownsville. Carriers from Jackson decline to reduce their rates for the purpose of meeting this competition.

In our opinion, the fair way to meet a competitive situation of this kind is to gradually grade up the rate as the river becomes more distant. No one locality or carrier should be required to sustain the entire brunt of this water competition. The rate at Brownsville might be somewhat higher than that at Covington, and the rate at Jackson somewhat higher than at Brownsville.

Looking at the entire situation, we are of the opinion that the present adjustment of rates between Brownsville and Jackson unduly discriminates against Jackson, and that the rate to New England destinations from Jackson ought not to exceed that from Brownsville by more than 5 cents per 100 pounds.

The defendants urge that this Commission has no jurisdiction to make an order requiring these defendants to cease and desist from that discrimination and ought not to make such an order.

It is said that the initial line is allowed to make these cotton rates; that the Louisville & Nashville has elected to establish this rate of 60½ cents from Brownsville, and that its independent action can not be interfered with.

This record does not clearly show the circumstances under which these initial lines are allowed to name these through rates. It is probably true that carriers north of the Ohio River allow lines south of that

river to name any through rate they choose, so long as the carriers north of the Ohio River obtain for their division a certain fixed amount. All this does not alter the situation. The rate when established is a joint rate, which could not exist but for the act of the carrier north of the river, and for which that carrier must stand responsible. It can not relieve itself from such responsibility by showing that it has consented to allow the carrier south of the river to name this joint rate.

It is urged, further, that the line from Brownsville to destination is not the same as the line from Covington or the line from Jackson. But this is not a question under the fourth section, and therefore not a question of the same line. The inquiry is, Do these defendants by their joint rates unduly discriminate against Jackson in favor of Brownsville? In our opinion they do. This discrimination does not exist by virtue of the action of the Louisville & Nashville alone, but by reason of the united action of these different defendants. Without the consent of the lines north of the Ohio the discrimination could not exist, and it therefore lies within the power of those lines to stop it. If the Louisville & Nashville extended all the way from Brownsville to the delivering point, a different question would be presented.

It is also urged that the lower rate at Brownsville arises out of the operation of that competition which the act to regulate commerce seeks to encourage. It certainly is one purpose of the act to preserve competitive conditions between common carriers subject to its jurisdiction, but it is another purpose to prevent undue discrimination; and we do not think that the fair intent of the act would permit the discrimination here existing in these rates between two localities but 25 miles apart, where the service for more than half the distance is by the same railroad. The Nashville, Chattanooga & St. Louis Railway extends from Jackson north to Paris, where it unites with the Louisville & Nashville. Cotton from Jackson passes 80 miles over the Nashville, Chattanooga & St. Louis and for the balance of the distance over the same line as that from Brownsville. Assume, now, that the Louisville & Nashville elected to maintain a rate of 70 cents from Brownsville, but the Nashville, Chattanooga & St. Louis, as the initial line, established a rate of 60 cents from Jackson. Could it be said that this road which hauls the traffic but 80 miles out of a total distance of 1,306 miles is entitled to create and perpetuate that rate condition? We think not. Every such situation must be considered by itself. In the present instance, we think that there is a discrimination against Jackson for which the defendants in this case are responsible and which they may properly be required to remove. This is exactly in line with our holding in *Indiana Steel & Wire Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C. Rep., 155.

The complainant may urge that the present rate can be maintained from Brownsville as against a rate of 65½ cents from Jackson and that under this adjustment Brownsville enjoys a more favorable rate than Jackson. And this is true; but Brownsville does not obtain under that adjustment any cotton to which Jackson is fairly entitled nor which Covington can rightly claim. The advantage over Jackson which Brownsville obtains grows out of competition between these defendant carriers acting within proper bounds.

An order will be issued in accordance with the foregoing opinion.

KNAPP, *Chairman*, dissenting:

I am unable to agree with the conclusions of the majority in this case for the reasons stated in my dissenting memorandum in *Indiana Steel & Wire Company v. C., R. I. & P. Ry. Co.*, 16 I. C. C. Rep., 162, which concededly involved the same question.

I am authorized to say that Commissioner HARLAN unites in this dissent.

17 I. C. C. Rep.

No. 2044.

ASPARAGUS GROWERS ASSOCIATION, OF CHARLESTON
COUNTY, S. C.,

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted December 9, 1909. Decided January 12, 1910.

1. Transportation charges on asparagus of 65 cents per crate of 65 pounds from Charleston, S. C., to New York, Philadelphia, Baltimore, and Washington, and of 90 cents per crate to Boston, found to be unreasonable to the extent that they exceed 60 cents per crate to New York, 58 cents per crate to Philadelphia, 56 cents per crate to Baltimore and Washington, and 70 cents per crate to Boston.
2. Refrigeration charges of 21 cents per crate on carload minimum of 230 crates and 15 cents per crate on carload minimum of 325 crates to New York, and of 24½ cents and 17½ cents per crate to Boston on the same carload minima, found to be not unreasonable.

George F. von Kolnitz for complainant.

R. Walton Moore for defendants.

Frank W. Gwathmey for Southern Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant association is composed of the principal growers of asparagus in Charleston County, S. C. Complaint alleges unreasonable and discriminatory freight rates and refrigeration charges on asparagus from Charleston, S. C., to Washington, D. C., Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass. Petition further alleges that defendants Atlantic Coast Line Railroad and Southern Railway discriminate against shippers of small quantities of asparagus in favor of shippers of carloads by declining to furnish refrigeration for less-than-carload lots.

The transportation rate to Boston is 90 cents per crate of 24 bunches, weighing 65 pounds, and to the other named cities is 65 cents per crate. Refrigeration charges are 21 cents per crate on a minimum carload of 230 crates, and 15 cents per crate on a minimum carload of 325 crates to New York, etc., and to Boston are 24½ and 17½ cents per crate, respectively, for the same minimum carloads.

Defendant Southern Railway denies that it has declined to furnish refrigeration on less-than-carload shipments of asparagus, but avers that the cost of refrigeration for a less-than-carload lot of perishable traffic is as great as for a carload and that, therefore, it is impracticable to refrigerate less-than-carload shipments unless the minimum provided for carload lots is charged for. The Atlantic Coast Line, while admitting that it refuses refrigeration for less-than-carload lots, denies that the practice causes unjust discrimination.

Before formal complaint was filed the question of the reasonableness of the rates was, at the request of complainant, handled informally by the Commission with the defendants that originate the traffic, both of which concluded that there was no reason for reducing the rates. One of the railway officials stated in the correspondence that for the season of 1908 the average price of asparagus on the New York market per crate of 24 bunches was \$11.64. Much testimony, accompanied by statements, was given at the hearing to show that this alleged price was erroneous. The average net return to the growers for the years 1908 and 1909 appears to have been about \$4.50 per crate, exclusive of transportation and refrigeration charges and commissions. At the hearing defendants stated that the New York market reports showed a value of about \$8 per crate, and complainant contends that the gross selling price at New York is about \$6 per crate.

The asparagus-shipping season from Charleston commences early in March and continues until about the middle of May. In the latter part of the season, when the temperature permits, some shipments are made in ventilated unrefrigerated cars. When prices are high, before the season is fully on, some shipments are made by express, but that means a transportation charge of \$2.50 per 100 pounds. Practically all shipments move by freight and under refrigeration. About 630 acres of land around Charleston are planted in asparagus, and practically all the product is shipped to New York. It is transported by boats to the vegetable wharves of the Southern Railway and the Atlantic Coast Line in Charleston. Asparagus comprises about one-third of the movement of all vegetable traffic over the wharves. The carriers unload the vegetables from the boats to the wharves. The refrigerating company loads them into the cars. This traffic is forwarded in expedited trains of light tonnage that are given preference over all other trains except passenger trains.

Generally speaking, vegetables are transported at any-quantity rates, but when refrigerated a carload minimum is applied. Prior to 1906 asparagus was accepted in less-than-carload quantities and consolidated into carloads by the car-line companies with which the

railroads had arrangements for furnishing refrigerator cars. One of the principal complaints now is that freight and refrigeration for a full carload are charged notwithstanding a smaller quantity is actually shipped. In 1906 two competing refrigerator lines were operating cars from the Charleston district, and no carload minimum was prescribed. All that was then necessary was for the shipper to indorse "Iced car" or "Refrigerator car" upon the shipping ticket, and any quantity of asparagus would be transported at the freight rate, plus refrigeration charge per crate. In 1907 two carload minima of 230 crates and 325 crates were prescribed for refrigeration. It is necessary for the shipper who desires refrigeration to make request for cars twenty-four hours before loading.

Atlantic Coast Line tariff provides:

Mixed carloads of different kinds of vegetables, or of vegetables in packages of different sizes, will be taken for refrigeration at the carload rate for each, but in no case shall the refrigeration charges for the entire shipment be less than the highest minimum refrigeration charge for any commodity in the car.

A similar provision is applicable on the Southern Railway. But it is contended that it is frequently impracticable to take advantage of this privilege on account of there not being enough shippers or vegetables to make up the minimum. In other words, under the previous practice the railroads accepted less-than-carload shipments and consolidation was effected by the refrigerator lines. Now the shippers must be responsible for the full minimum loading of the refrigerator car and are permitted to consolidate their shipments.

No evidence other than opinions was produced as to the alleged unreasonableness of the refrigeration charge as applied to a single crate or to the carload when the prescribed minimum is loaded, but the fact that where the minimum is not loaded the charge is higher per crate than when a full carload is shipped is made the basis for the charge of unjust discrimination against the less-than-carload shipper. Similar minimum requirements are applicable generally to all vegetables under refrigeration and to all carload traffic. In other cases the Commission has taken note of the fact that associations of shippers have been formed for the purpose of aggregating or consolidating the small shipments of their members so as to take advantage of carload rates and of the privilege of so mixing shipments. No witness was able to cite any instance in which refrigeration was provided for less than carloads. The weight of the evidence appears to be that as to refrigeration a car is the unit, and to attempt to give refrigeration under existing rates on less-than-carload lots would be a losing proposition to both the railroads and the refrigerator companies.

Complainant's view appears to be that the establishment of carload minima in 1907 was due to the fact that previous to that time

two refrigerator lines were operating in that territory, and competition between them resulted in their performing consolidation for the shippers, but that the contract between the Atlantic Coast Line and the Armour Car Lines, under which the latter furnishes all cars needed, gave the former the power to prescribe the minima. There does not, however, appear to be any controlling reason for assuming that the presence of two companies prevented carload minima being prescribed. Indeed, the testimony shows that the disastrous financial result from the attempt to give refrigeration on less than carloads was the moving cause for the elimination of less-than-carload refrigeration. It is also shown that in connection with the contract with the Armour Car Lines the Carolina Fruit Growers & Truckers' Association, which had tried refrigerator cars of other lines, signified preference for the Armour, the strongest company operating in Charleston territory. Previous to this arrangement the charge for refrigeration was higher than it now is. Under this arrangement it was reduced to the Chadbourn (N. C.) basis.

Nearly all the cars furnished for this business are 40 feet long, outside measurement. In a car of that size it is possible to load 350 crates of asparagus of the standard size in 58 per cent of the loading space of the car. A few 36-foot cars are used into which, loading 5 crates high, as is customarily done in all cars, 300 crates can be placed in 60 per cent of the loading space. There is no indication that loading 5 crates high results in the property not carrying safely or not being properly refrigerated. In 1908, of 66 cars of asparagus shipped 13 were loaded with 230 crates or less, 32 with more than 230 and not more than 325 crates, 12 with more than 325 crates, and 9 with other vegetables in addition to asparagus. In 1909, of 63 cars shipped 17 were loaded with 230 crates or less, 27 with more than 230 and not more than 325 crates, and 19 with more than 325 crates. Obviously there is no difficulty about loading the minimum required if the vegetables are at hand.

On a movement from Charleston to New York the cost of ice is \$35.57 a car, and that cost would be just as much if car were only partly loaded. A car moving to New York must be reiced at Ashley Junction, Rocky Mount, and Potomac yards, and moving to Boston, must be reiced at Jersey City also. Icing is, of course, but a part of the expenses of the refrigerator line. In 1907 on business for the Atlantic Coast Line the profit from refrigeration was \$4.06, and in 1908, \$3.36 a car. No profit accrues to the railroads from refrigeration and loading, the charges for which go to the Armour Car Lines Company.

It does not appear that the requirement of twenty-four hours' advance notice of need for a refrigerator car, the car having to be

pre-cooled, is unreasonable, or that the rule of the Atlantic Coast Line—

When iced refrigerator cars are placed at shipping points for loading on order of shippers, and are not loaded, parties ordering same will be required to pay the cost of the ice which has been placed in the cars, unless car is used by some other shipper without loss to this company for the cost of any initial icing.

is in violation of any provision of the law.

The question of refrigeration of similar traffic from Florida was considered in *Florida Fruit & Vegetable Shippers' Protective Association v. A. C. L. R. R. Co.*, 14 I. C. C. Rep., 476, and under the facts there found the Commission was of the opinion that refrigeration charges of \$70 per car of 21,400 pounds on fruit and vegetables from Florida to northern markets were not unreasonable. No new facts are found in this case that suggest a different conclusion. Here the refrigeration charges from Charleston to New York are a little more than \$48 per car of 21,125 pounds when 325 crates are loaded. In view of the cost of the service, comparison with rates in other localities, and former decisions of the Commission, we can not hold that these charges for refrigeration are unreasonable or that they discriminate unjustly against the shippers of less-than-carload lots. *Truck Farmers' Assn. v. Northeastern R. R. Co.*, 6 I. C. C. Rep., 295; *American Fruit Union v. C., N. O. & T. P. Ry. Co.*, 12 I. C. C. Rep., 411; *Re Charges for Transportation and Refrigeration of Fruit*, 11 I. C. C. Rep., 129; *Waxelbaum & Co. v. A. C. L. R. R. Co.*, 12 I. C. C. Rep., 178; *Voorhees v. A. C. L. R. R. Co.*, 16 I. C. C. Rep., 45; *Ozark Fruit Growers' Assn. v. St. L. & S. F. R. R. Co.*, 16 I. C. C. Rep., 106.

The transportation rate of 65 cents per crate to New York has been in effect since March, 1903. The rate was 85 cents from 1894 to 1899, and 80 cents from 1900 to 1902.

In 1908 the Southern Railway moved but a few crates of asparagus, due to its disinclination to engage in the business owing to having paid damage claims on asparagus shipments in 1907 aggregating \$4,264.36, while its total freight charges on that year's movement amounted to a little over \$1,200. The Atlantic Coast Line paid \$1,300 in damage claims on asparagus in 1907, and claims were entered for \$840 more. There is, of course, much risk in the carriage of perishable traffic, and this seems to be particularly true of asparagus.

In the *Voorhees case*, *supra*, it was shown that 7,000 cars of vegetables per year are shipped from Charleston and district. Rates from Charleston generally are affected by water competition. The absence of refrigeration by water lines and the longer time required to get to market modify to a great extent the effect of water competition on the transportation of such vegetables as require refrigeration and are too tender to withstand delay.

It is shown that the rates on asparagus from Charleston are as low, relatively, as from other points in the Carolinas, and it is alleged that any change in the Charleston rate would disturb the rates over a large area. This argument, however, compares asparagus with nothing but asparagus and compares defendants' rates only with their own rates on the same commodity.

In this case, as in the *Voorhees case, supra*, defendants argue that they are obliged to provide expensive facilities for handling the vegetable business, and they compare the per car earnings on asparagus and lumber. They state that lumber will load 25 tons to the car, while asparagus loads only about 7 tons. This statement, however, is based on the extreme of the lowest carload minimum applicable to asparagus. The record shows that the average actual loading of asparagus for 1908 via the Atlantic Coast Line was over 10 tons per car. Defendants say that their earnings on a car of lumber from Charleston to New York would be \$127.50, and that on a carload of asparagus the transportation charges would be \$149.50. This statement again has for its basis the lowest extreme for the earnings on asparagus; in fact, the per car earnings via the Atlantic Coast Line for the year 1908 averaged about \$198.

A fair comparison would be with other vegetables rather than with lumber. Defendants' transportation earnings on lettuce from Charleston to New York were found in the *Voorhees case, supra*, to be about \$156 per car, and the rate that produced those earnings was attacked, but was found to be not unreasonable.

One of the allegations of complainant in this case is that defendants transport vegetables from Florida points to the same markets, a greater distance, at lower rates. In *Florida Fruit & Vegetable Shippers case, supra*, a rate on vegetables of 43 cents per crate of 50 pounds from Florida base points to New York was held to be not unreasonable. It should be noted, however, that that rate is from base points, and that it is, therefore, simply a haulage charge, the gathering charge being included in the rates up to the base points. The average loading of vegetables in refrigerator cars was found to be about 17,600 pounds, which afforded a per-car earning for transportation of a little more than \$150. The distance from Jacksonville, a representative Florida base point, to New York is something less than 1,000 miles. From Charleston to New York the distance is about 740 miles.

The movement of asparagus from Charleston via the Atlantic Coast Line in 1908 was 61 cars, of which 5 contained less than 230 crates of vegetables, including asparagus. The average loading was a little over 300 crates. On this basis a rate of 60 cents per crate would yield per-car transportation earnings of \$180. On the same

basis a rate of 55 cents per crate would yield per-car earnings of \$165. It appears that the losses to the carriers from damage to and deterioration of asparagus in transit were heavy. It must be assumed that those losses are avoided as far as is possible. It may be that means have been or will be discovered for materially reducing them, but we think that consideration must be given to that feature in fixing reasonable rates.

A full hearing has been had in this cause, and we are of the opinion that the transportation rates on asparagus of 65 cents per crate of 24 bunches, estimated weight 65 pounds, from Charleston, S. C., to New York, N. Y., Philadelphia, Pa., Baltimore, Md., and Washington, D. C., and 90 cents per crate to Boston, Mass., are unreasonable to the extent that they exceed rates of 60 cents per crate from Charleston to New York, 58 cents per crate to Philadelphia, 56 cents per crate to Baltimore and Washington, and 70 cents per crate from Charleston to Boston. We are also of the opinion that for the future the transportation rates should not exceed 60 cents per crate of 24 bunches, estimated weight 65 pounds, from Charleston, S. C., to New York, N. Y., 58 cents per crate to Philadelphia, Pa., 56 cents per crate to Baltimore, Md., and Washington, D. C., and 70 cents per crate to Boston, Mass. These conclusions are not to be understood as affording a basis for reparation on any past shipments.

An order will be entered in accordance with these views.

17 I. C. C. Rep.

No. 1733.

M. C. KISER COMPANY ET AL.

v.

CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted January 23, 1909. Decided November 27, 1909.

Rail-and-water rate of \$1.05 per 100 pounds (first class) on less-than-carload shipments of boots and shoes from Boston and New York to Atlanta found unreasonable, and 95 cents prescribed as maximum.

Wimbish, Watkins & Ellis for complainants.

Ed. Baxter, Sidney F. Andrews, and R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint involves the reasonableness of the rail-and-water rate on boots and shoes from Boston and New York to Atlanta. Boston will be taken as representative in this report, the conclusions and order, however, to apply also to the other point involved. Prior to February 1, 1905, boots and shoes from New England and the east were generally rated first class, which represented any quantity rail-and-water and all-rail rates of \$1.14 and \$1.26, respectively, per 100 pounds from eastern ports to Atlanta. On the date mentioned the former rate was reduced to \$1.05 and the latter to \$1.14, following a general readjustment of class rates both from the east and west to Atlanta. In this readjustment the second class rail-and-water rate to Atlanta was reduced from 98 to 93 cents per 100 pounds and carload commodity rates on boots and shoes from these eastern ports were established as follows: To Atlanta, Columbus, Macon, Rome, and Chattanooga, 85 cents; Augusta, 81; Montgomery and Birmingham, 90 cents per 100 pounds; these rates being applicable from the ports proper; first class to apply to less-than-carload shipments. The tariffs here in question were governed by the Southern Classification, a rule of which provides as follows:

Carload rates shall apply only when a carload of freight is shipped from one station, in one day, by one shipper, to one consignee and destination. Only one bill of lading shall be issued for any such carload shipment. The minimum carload weight provided for on any article, has reference to the minimum weight on which the carload rate will apply, when loaded in or upon one car, although the actual weight may be less.

As this requirement could not reasonably be met under the peculiar conditions of the boot and shoe trade, the Ocean Steamship Company, of Savannah, a defendant in this proceeding, and which had ample dock facilities at Boston, concentrated less-than-carload shipments received from interior points of manufacture at that port until they aggregated a carload quantity, when by forwarding from Boston as consignors to themselves at Atlanta as consignees complainants obtained the benefit of the carload rate. Following this action the Seaboard Air Line and Merchants & Miners Transportation Company by proper tariff authority applied these carload rates, effective February 10, 1905, to any-quantity shipments, and the other defendants likewise readjusted their tariffs effective on different dates soon thereafter, the tariff of the Southern Railway, the last carrier to meet this rate, becoming effective March 1, 1905. Following discussions between the carriers, as hereinafter appears, tariffs were issued by defendants providing that, effective May 1, 1905, all commodity rates on boots and shoes from eastern points to the southeast would be withdrawn and a carload-commodity rate of 93 cents applied to Atlanta; the less-than-carload rate to that point as well as the any-quantity rate to other points in Atlanta territory to be first class. Upon the application of complainants the United States circuit court for the northern district of Georgia issued a temporary restraining order on April 29, 1905, against this advance, and after a hearing before that court it was ordered, on December 21, 1907, that the temporary injunction theretofore issued—

should remain in force a reasonable length of time to allow complainants to present this matter to the Interstate Commerce Commission, and in the meantime, the case here will be stayed until a determination by that body as to whether the proposed increase in rates is reasonable and proper, and as to what is a reasonable rate.

Complainants contemplating a proceeding before the Commission, as suggested by the court, it was found that as a result of this injunction the advanced rates had been canceled, thus rendering presentation of a complaint to the Commission against them impossible, and upon motion of course for defendants that the injunction be dissolved it was ordered by the court on June 26, 1908, that the restraining order theretofore issued should be so modified as to permit the establishment of the advanced rates in the manner prescribed by the act to regulate commerce, but that the injunction against the collection thereof should stand until further order of the court. The proposed advanced rates above referred to were accordingly established in proper form, effective September 16, 1908, and this complaint was filed with the Commission September 19, 1908. It was stipulated by the respective parties that the case should be decided by the Commission upon the record as presented to the court, with certain additions that have since been made.

Complainants are wholesale boot and shoe jobbers at Atlanta, which is by far the largest boot and shoe jobbing center in that territory, and buy largely from the manufacturers in the east direct. The Orr Shoe Company, a party complainant, in addition to its jobbing business, now operates at Atlanta a factory with a capacity of 600 pairs a day, which it is alleged was built on the strength of the 85-cent rate and can not be successfully operated if the advanced rates are collected. The Kiser Company asserts that its intention to manufacture shoes at Atlanta would be defeated under the advanced rates. It is in evidence that within the past six years four wholesale shoe houses at Atlanta, with an annual business of about 2½ million dollars, have been forced to retire on account, it is alleged, of the unfavorable and unreasonable rate adjustment. Complainants also allege that the proposed adjustment is the result of concerted action of the carriers through the medium of the Southeastern Freight Association, and therefore in restraint of competition and unlawful; that the carload rate is of no practical benefit, and that the rates as advanced would work an unjust discrimination against Atlanta.

The principal carriers delivering boots and shoes at Atlanta from eastern port cities are the Southern Railway, Georgia Railroad, Central of Georgia Railway, Seaboard Air Line Railway, and the Atlanta, Birmingham & Atlantic Railroad, the construction of which into Atlanta has been completed since this controversy arose. The Ocean Steamship Company, operating through Savannah from Boston, Providence, and New York, is the principal connection of the Central of Georgia Railway at Savannah as to this traffic. The Seaboard Air Line connects at Savannah with the Ocean Steamship Company and the Merchants & Miners Transportation Company, and at Portsmouth, Va., with the Merchants & Miners Transportation Company and the Old Dominion Steamship Company. The Southern Railway, as a delivering line, operates from Pinners Point (Norfolk), Va., in connection with the Merchants & Miners Transportation Company, plying from Boston and Providence; with the Old Dominion Steamship Company from New York; with the Clyde Steamship Company from Philadelphia, and with the Baltimore and Chesapeake Steamship Company from Baltimore. The Southern Railway is also a delivering line in connection with the Norfolk & Western Railway Company from Bristol, Va., which forms an ocean-and-rail route from the east through Norfolk with the steamship lines above enumerated that reach that port. The Georgia Railroad does not reach a port city, but through Augusta, its eastern terminus, participates in traffic from Charleston and Norfolk with the Southern Railway, Atlantic Coast Line, and the Charleston and Western Carolina railways, thus forming part of a through

line from those ports. The Georgia Railroad, while offering evidence, is not a party defendant. That part of this traffic moving from the east through Charleston is brought to that port by the Clyde Steamship Company.

The chief movement of boots and shoes from Atlanta is to Georgia, Florida, South Carolina, Alabama, and Mississippi, and it is charged that as to these commodities distributed in the states above named, the rates from the east to Atlanta result in an adjustment unduly preferential to Chicago, Cincinnati, Lynchburg, and St. Louis, and unduly prejudicial to Atlanta. While there is competition alleged from the cities above named, as well as, to a less extent, a few points in the south, the testimony and evidence are directed mainly to Lynchburg and St. Louis, and only these points will be considered for the purposes of this report.

Lynchburg is an extensive shoe jobbing and manufacturing point, and it is in evidence that within the past fifteen years the number of Lynchburg jobbing houses has increased from one to six, three of which are now either operating or building factories for the manufacture of shoes. Complainants testify that, eliminating a radius of 100 miles from Atlanta, the rate from Lynchburg to points in Atlanta territory is practically the same as the rate from Atlanta, and that Lynchburg has therefore an advantage over Atlanta represented by the difference in the inbound freight from the east to Lynchburg and Atlanta. Defendants assert that the rates to Lynchburg and Atlanta are made under substantially dissimilar circumstances and conditions, the former being controlled by water competition to Richmond, and that the water lines to Richmond or Norfolk, in connection with the Chesapeake & Ohio Railway, make the Lynchburg rate. There is no all-water route to Atlanta. It is claimed that the Chesapeake & Ohio Railway on account of its proximity to the carriers that apply the northern trunk-line basis of rates, which are generally lower than in the south, must maintain a relation of rates with those lines in order to secure its fair share of traffic; that the Chesapeake & Ohio rates from the west to Newport News are therefore the same as the northern carriers' rates to Baltimore; and that under the Chesapeake & Ohio's construction of the long-and-short-haul clause of the act, making the Newport News rate the maximum to intermediate territory, the Lynchburg rate from the west is generally the same as that to Newport News and therefore Baltimore. In the reverse direction competition of the northern lines from the east that must be met at Cincinnati and other points influences the boot-and-shoe rate to Lynchburg. It is further insisted that both the all-rail and rail-and-water distances to Lynchburg are materially less than to Atlanta. Lynchburg is 146 miles from Richmond and

221 miles from Newport News, while Atlanta is 295 miles from Savannah, her nearest port. In the division of the rate between the steamship lines and the railroads the prorating distance from Boston to Norfolk, Charleston, and Savannah is 300 miles, so that upon this basis the computed distance from Boston to Lynchburg is 521 and to Atlanta 595 miles, to which cities any-quantity commodity rates of 47 and 85 cents, respectively, per 100 pounds are now charged. The first class rail-and-water rate to Lynchburg is 54 cents. As before stated, the rates to Atlanta in controversy, the collection of which has been enjoined but which are contained in tariffs duly filed with the Commission, are 93 cents per 100 pounds, carloads, and \$1.05 or first class, less than carloads.

The following table shows combinations in cents per 100 pounds on Atlanta and Lynchburg from Boston to the points therein named; also direct rate to those points:

	Atlanta to—	Boston- Atlanta combi- nation.	*Lynch- burg to—	Boston- Lynch- burg combi- nation.*	Boston, direct through rate.
Albany, Ga.....	\$0.67	\$1.52	\$0.98	\$1.45	\$1.05
Bainbridge, Ga.....	.82	1.67	.98	1.45	1.05
Tifton, Ga.....	.85	1.70	.98	1.45	1.05
Anniston, Ala.....	.52	1.37	.84	1.31	1.14
Decatur, Ala.....	.72	1.57	.86	1.33	1.16
Opelika, Ala.....	.64	1.39	.83	1.30	1.05
Hattiesburg, Miss.....	1.03	1.88	1.27	1.74	1.34
Meridian, Miss.....	.77	1.62	.84	1.31	1.14
Jacksonville, Fla.....	.61	1.46	.76	1.23	.95

*Rate from Boston to—	Cents.
Atlanta.....	85
Lynchburg.....	67

St. Louis is also a large boot and shoe jobbing as well as manufacturing point, obtaining a large part of its supplies of these commodities from the same eastern territory in which Atlanta buys the greater part of its boots and shoes, and in southeastern territory St. Louis sells to the retail dealers direct, as the Atlanta jobbers do. St. Louis is situated west of the territory bounded by a line drawn from Buffalo through Erie and Pittsburg to Wheeling, which marks the eastern termini of the western and the western termini of the eastern trunk lines. Western territory as used in this report extends from this dividing line to the Mississippi and south to the Ohio River, and eastern territory extends from this line north of the Potomac River to the eastern seaboard. The Illinois Central; Mobile & Ohio; Louisville & Nashville; Cincinnati, New Orleans & Texas Pacific; Frisco System; Nashville, Chattanooga & St. Louis; and Southern railways are the principal carriers from this western section to Atlanta territory, which is described as situated east and south of a line drawn from Wilmington, N. C., through Walhalla, S. C., and Murphy, N. C.,

Chattanooga, Birmingham, Montgomery, Selma, and Mobile. Competition between carriers from eastern and western territory for traffic to the southeast some years ago brought about adjustments resulting in the establishment of a relation of rates from these sections, so that the rate from Boston and New York to Atlanta is the result, in part, of competition not only among the eastern but also between the eastern and western carriers. At the time of this adjustment the distance from Louisville to Atlanta, through Nashville and Chattanooga, was 474 miles, and from Baltimore the same, using the then prorating distance of 179 miles to Savannah. Like rates to Atlanta were accordingly established from Baltimore and Louisville on traffic common to those points. Other Ohio River crossings were accorded the Louisville rate, while rates from Chicago and St. Louis were based on Ohio River crossings, and from Boston and New York certain differentials were added to the Baltimore rate. Relative rates from South Atlantic ports, added to the water rate from the eastern seaboard to these ports, measured the rail-and-water through rate from the east to Atlanta, and to other points in southeastern territory rates were made with relation to the Atlanta rate. It is therefore alleged that a reduction in the eastern rate to Atlanta causes a corresponding reduction from St. Louis and Chicago, and considerable stress is laid on the watchfulness of the western carriers over those from the east, and the measures they adopted to maintain this relative adjustment.

In November and December, 1904, following insistent demands of Atlanta for a readjustment of rates, a conference was held at that city between the carriers and a committee appointed by the mayor and city council, which committee is hereinafter referred to as the Oglesby Committee, and as a result rates from the east and west were reduced on all classes, effective February 1, 1905, as already indicated.

A somewhat detailed history of the negotiations leading to the various adjustments herein involved is given by Mr. Green, now freight traffic manager of the Southern Railway, who testified to the following effect:

While in attendance at a meeting of the Southern Classification Committee at Washington in December, 1904, about the time of a second meeting of the Oglesby Committee, Mr. Green received instructions to recommend the adoption of a second class carload rating on boots and shoes. This recommendation was opposed by the carriers represented at the classification meeting, as boots and shoes do not originate in carload lots, and representatives of the lines, serving Chicago and St. Louis, stated that if this recommendation were adopted they would apply the second class rating to any-quantity shipments from their territory. Nevertheless, at a later meeting at Atlanta this rating was adopted by a slight majority, whereupon the officials of the western carriers again gave notice of their intention to reduce the

boot-and-shoe rate from their territory. Although issued, the carload rating to Atlanta did not become effective, as complainants pointed out that its use was impracticable, as above suggested. Another plan was then suggested to aid the Atlanta shoe interests. The second class rate on boots and shoes from interior New England points to Atlanta, in accordance with the general readjustment above mentioned, was to be reduced on February 1, 1905, from \$1.07 to \$1 per 100 pounds. The initial lines delivering at the port invariably charged the first class rate of 15 cents on boots and shoes, and deducting this amount from the \$1 rate from the interior a rate of 85 cents from the port proper was arrived at and its adoption recommended by Mr. Green. There is some conflict in the record as to the basis of the initial carriers' proportions to the port, but the effect as to the adoption of the 85-cent rate is substantially the same.

The western carriers again gave notice of their intention to apply second class to any-quantity shipments, some even threatening to make the exact rate of the eastern carriers applicable to such shipments. A carload rate of 85 cents from the east was nevertheless established, effective February 1, 1905, less than carloads \$1.05 (first class), and our tariffs show that on the same date a similar adjustment was made effective by the western carriers, and that readjustments from the east and west were made at practically the same times during the period under discussion, including a corresponding restoration of higher rates effective May 1, 1905. Mr. Green further states that at an executive meeting of the Southeastern Freight Association at New Orleans in March, 1905, the rate on boots and shoes was brought up for discussion by an executive officer of an eastern line, who stated that the any-quantity rate to Atlanta and the other points mentioned had occasioned complaints at Selma, Rome, Augusta, and other points. The western lines were threatening still further reductions, and one western carrier even expressed its intention to apply second class to the entire territory covered by the Southern Classification. It is also stated by Mr. Green that subsequent to the meeting at St. Augustine in January, but prior to that at New Orleans in March, the stenographic notes of the Oglesby Committee conference had been obtained, which showed that he was mistaken in his understanding that second class from interior points of manufacture had been agreed upon with the Atlanta shippers, it appearing that complainants had been in fact promised a carload rate of 93 cents from Boston proper, only, to Atlanta; that at a general meeting of the Southeastern Freight Association and Southeastern Mississippi Valley Association at New Orleans on the day following the meeting of the executive committee referred to, the Southern Railway declined to consent that all commodity rates be

withdrawn and first class applied to any quantity shipments; and that the western carriers finally agreed that a carload rate from the east to Atlanta might be extended, as promised to the Atlanta jobbers, it being distinctly understood, however, that if reductions were made to other southeastern points the western carriers would insist upon corresponding reductions from their territory. Finally at a conference in New York on April 12, 1905, the Southern Railway and connections joined in the establishment of the 93-cent carload rate, the less-than-carload rate, as already suggested, to be first class. All the defendants were parties to the advance of May 1, 1905.

The following table shows the rail-and-water rates, computed distances, and rate per ton per mile from Boston to the points therein named under the present rates:

Rail-and-water rates and distances from Boston.^a

To—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Atlanta:			
Via Savannah.....	595	85	28.6
Via Norfolk.....	897	85	19
Lynchburg.....	521	47	18
St. Louis.....	1,205	^b 83	13.8
Cincinnati.....	968	^b 60	12.4
Nashville.....	883	^b 91	20.6
Knoxville.....	746	^b 100	27

^a All references in report to earnings of steamship lines computed on prorating mileage.

^b First class. Under the proposed adjustment the carload rate of 93 cents would yield 31 mills per ton per mile and the less-than-carload rate of \$1.05 about 35.3 mills through Savannah, and 21 and 23.4 mills, respectively, through Norfolk.

The following table shows the all-rail rates, distances, etc., from Boston to the points above mentioned:

All-rail rates and distances from Boston.

To—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Atlanta.....	1,111	117	21
Lynchburg.....	636	84	17
St. Louis.....	1,205	88	14.6
Cincinnati.....	945	65	13.8
Nashville.....	1,187	91	15.3
Knoxville.....	971	100	20.6

This traffic to Atlanta, through Savannah, yields to the Ocean Steamship Company 23.2 mills per ton per mile and to the Central of Georgia Railway about the same amount, while the Merchants & Miners Transportation Company receives 16.6 mills to Norfolk and the Seaboard Air Line Railway 16.5 mills thence to Atlanta. It is

in evidence that the average earnings of the Seaboard Air Line for the year 1905 were slightly above 11 mills. The rate to Nashville pays the steamship lines 14 and 17.4 mills through Norfolk and Charleston, respectively, and the rail lines 14.7 and 17.3 mills.

Both the all-rail and rail-and-water rate to Nashville apply from the interior points of manufacture as well as the port proper. Defendants claim that the Nashville rate is made by the trunk lines north of the Ohio River in connection with the Louisville & Nashville Railroad and is controlled by competition of the Ohio and Cumberland rivers. The extent of this competition is not shown. Neither is it shown that boots and shoes are now transported by these water carriers.

The all-rail and rail-and-water rates to Knoxville also apply from the interior as well as the port proper. Defendants assert that the proximity of Knoxville to Ohio River crossings tends to a lower adjustment to that point from the west and that competition between the eastern markets and eastern carriers on the one hand and the western markets and western carriers on the other affects the Knoxville rate; also that in territory west of a line through Knoxville and Chattanooga the trunk lines will not recognize a differential in favor of the water-and-rail routes.

While it is stated by defendants' traffic officials that 300 miles is the prorating distance from Boston to Norfolk, Charleston, and Savannah, the actual divisions of the steamship lines, as well as those of the rail lines, are shown as follows:

Division of rates.

Boston to—	Rate.	Steam- ship.	Rail.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Atlanta:			
Via Norfolk and Seaboard Air Line	• 85	24.9	• 46.1
Via Savannah and Central of Georgia Ry.	• 85	24.8	• 34.2
Lynchburg:			
Via Chesapeake & Ohio Ry.	47	26.8	• 21.2
Via Southern Ry.	47	• 27.3	• 19.7
Cincinnati via Southern Ry.	60	• 20.7	• 28.2
St. Louis via Southern Ry.	83	• 20.7	• 62.3
Nashville via Southern Ry.	• 91	21	• 59

• Division after deducting insurance, terminal, and similar charges.

• Includes Boston terminal allowance and marine insurance.

• Includes Norfolk terminal, bridge toll, and river transfer.

There is considerable evidence on complainants' contention that the carload rate is of no practical utility and as to the feasibility of concentrating into carload lots less-than-carload shipments at the ports. It is conceded by defendants that boots and shoes are not a carload commodity, one of the traffic officials testifying that to the best of his knowledge Atlanta is the only city with the carload rate.

Jobbers require a wide diversity of stock and, while an aggregate of several carloads may be shipped through the port in one week, it is seldom, if ever, that a carload quantity is required or can be received in one day from one factory or station so as to meet the requirements of the classification rule heretofore quoted. Several plans are suggested as a result of investigations and correspondence by defendants, all of which involve additional expense and in some instances require delivery at the port on certain days of the week. Mr. Winburn, of the Central of Georgia Railway, who made a personal investigation of these conditions, admits that the cost of concentration and insurance would approximate the less-than-carload rate, and Mr. Whitney, of the Merchants & Miners Transportation Company, states in a letter dated January 3, 1905, to Mr. Kiser, that his company has "always contended that a reduction in the classification of shoes, on carload quantity only, would not be beneficial to the shoe people." We are convinced upon a full consideration of all the evidence that the concentration of less-than-carload shipments at the ports is not feasible in the legal sense that rates must be free from conditions and burdens in their application.

Boots and shoes are packed in wooden cases, case and contents averaging 60 to 65 pounds, and are easily loaded and unloaded. The record does not show any particular hazard in transit. One of the complainants testified that he did not recall filing a claim for damage not occasioned by wrecks or leaking cars. Claims for theft, while more frequent, are not shown to be of such consequence as to appreciably influence the rate, claims of this class of the Orr Shoe Company for the year ending March 15, 1906, against the Seaboard Air Line on shipments from Boston and New York aggregating \$61.29, and against the Central of Georgia, \$87.55, on a freight account with these carriers of some \$30,000. For the year ending June 30, 1906, the Kiser Company's claims of this class on inbound freight from New England ports amounted to \$74.75 on a freight account of \$25,636.72. It is in evidence on behalf of the Southern Railway that from January 1, 1904 to January 22, 1906, the total claims filed at Atlanta for concealed losses on shoes amounted to \$1,207.11.

Defendants show that the revenue derived from a carload of boots and shoes is considerably less than on certain enumerated commodities rated first, second, and even third class. Owing to differences in bulk and weight there must of necessity be marked variations in the revenue per car produced by articles in the same and other classes, and a disparity either way is not conclusive of the propriety of an adjustment. A commodity rate is generally lower than the rate applicable to the class from which the commodity is withdrawn, and is established because considerations other than relative rating so

require. It is true boots and shoes have been almost universally rated first class in the several classifications, but the long maintenance of a particular rating can not negative the right of shippers to such lower adjustment as circumstances and conditions may demand and which the action of the carriers in voluntarily establishing shows to be *prima facie* reasonable.

The published rates now in issue, we are convinced, were in great measure prompted by the retaliatory action of the western lines in practically meeting and threatening to exceed the reductions from eastern territory, and it is stated by certain of the defendants that were it not for this and the adoption of the any-quantity rate by other carriers from the east the 85-cent carload rate would not be disturbed.

This increase is shown to have been preceded by conferences between the members of the Southeastern Freight Association, and it clearly appears that the increased rates, while not shown to have been founded upon a specific agreement, were initiated by each carrier with a full understanding that like action would be taken by its competitors. Although the primary consideration in cases of this nature before the Commission is the reasonableness of the rates involved, through whatever agency established, the practical unification of carriers in increasing their rates may and should properly be taken into account in determining whether an increase is in fact justified or is the result of a concerted action without regard to the justness of the increased rate.

The movement of boots and shoes is steady throughout the year, and it is testified that the shipments of the Orr Company for the year ending March 1, 1906, aggregated 74,716 cases, an increase over the previous year of 12,866 cases, and that for the three wholesale houses at Atlanta the movement of 150,056 cases for the year ending March 1, 1906, represented a gain of 29,626 over the previous year. The Kiser Company's shipments for the year ending December 31, 1905, amounted to 47,000 cases, an increase over 1904 of 8,400 cases, and for the first six months of 1906 this company received 31,000 cases. It appears that the movement from the east in 1906 and 1907 and for the first ten months of 1908 materially decreased not only to Atlanta, but to the other points mentioned herein as well. It is also shown that for the two years last mentioned the general movement from New England of boots and shoes was below normal and this period can hardly be taken as a fair indication of the effects of the 85-cent rate on the Atlanta tonnage. General trade conditions are no doubt responsible for the decreased movement. One of the complainants testifies that following the financial disturbances of 1907 his company curtailed its inbound tonnage and supplied the trade from stock on hand, which decreased for the year ending November 1, 1908, from

approximately a half million to something over two hundred thousand dollars.

The reasonableness of any adjustment can not be ascertained with mathematical accuracy, and especially is this true in the present case, wherein must be considered not only individual rates and comparisons, but also the conditions leading to and the history of the present adjustment. We are not unmindful that boots and shoes have generally been and are now rated first class in the different classifications, but the tonnage to Atlanta, the voluntary establishment of a carload and later an any-quantity commodity rate far below that basis, and other considerations convince us of the propriety of a lower adjustment than that now published by the defendants. However, we must also keep in mind the probable effect of our action upon the rates to other destinations in the territory involved. As before stated, it has been demonstrated to our satisfaction that a carload rate is of no practical utility. We are, therefore, of opinion, upon a careful consideration of the whole record, that the defendants' rate of \$1.05 per 100 pounds, applicable to less-than-carload shipments, is under all the circumstances and conditions unreasonable and unjust. We are not convinced, however, that 85 cents per 100 pounds, any quantity, is a reasonably compensatory rate. Boots and shoes are high-grade traffic and should accordingly bear their proportionate share of general transportation expense. St. Louis, Cincinnati, and Lynchburg are accorded lower rates than Atlanta, it is true, but it should be considered that the lower rates to points north of the Ohio River, due to greater density of traffic and competition, force the rates to the first-named points to a lower basis than obtains generally to points in the south, and it may be also that the Lynchburg rate is influenced by this northern adjustment. It is therefore our finding and conclusion that the defendants' rate of \$1.05 per 100 pounds for the transportation of boots and shoes by water and rail from Boston and New York to Atlanta is unjust and unreasonable to the extent it exceeds 95 cents. It is our further conclusion that a reasonable and just charge to be applied in the future should not exceed 95 cents.

The question now arises whether our order shall extend to the rates from other ports than Boston and New York. The allegations of the petition include Boston, New York, and "other Eastern ports," while the prayer of the petition is directed simply to "Eastern ports." The 85-cent carload and any-quantity rates referred to herein appear to have applied not only from Boston and New York, but from Providence, Philadelphia, and Baltimore as well. All these points take the same first class rail-and-water rate to Atlanta, except Baltimore, which enjoys a differential of 7 cents. While doubtless the eastern ports grouped with Boston and New York with respect to class

rates were contemplated by complainants, we do not feel justified in extending the order beyond the specific and definite allegations of the complaint. We can not accept such general designations as the basis for an order which to be enforceable under the law must be specific and definite either in enumerating particular points or indicating a specifically defined group or territory. As to Baltimore, the 95-cent rate, under the established method of rate-making from North Atlantic ports to Atlanta, apparently should not be prescribed, even were there no question of our authority to include that port upon the present pleadings, but it is expected that practically the same relative adjustment from Baltimore will be established and maintained as to this traffic that has heretofore existed between that point and the North Atlantic ports. It is suggested that a less-than-carload rate of 89 cents from Baltimore to Atlanta would properly maintain that relationship.

An order will be entered in accordance with the views herein expressed.

17 I. C. C. Rep.

Nos. 2273 and 2670.
LARROWE MILLING COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted September 30, 1909. Decided January 4, 1910.

1. The principal defendant has two routes from Janesville, Wis., to Chicago, a direct one of 91 miles and an indirect one through Waukesha and Milwaukee of 162 miles. On shipments moving from Janesville to Cattaraugus, N. Y., and Windber, Pa., over the direct route to Chicago, charges were based on the local rate to Chicago via that route and the through rate beyond, although the local rate over the indirect route through Waukesha, added to the through rate to destination from Chicago, made a lower combination; *Held*, That, in the absence of a specific through rate, the case is controlled by Rule 215 of Conference Rulings Bulletin No. 4, and the complainant is entitled to reparation for the resulting overcharge.
2. The Commission intervenes in misrouting cases only when, as the result of the failure to obey the shipper's routing instructions, or as a result, without such instructions, of moving a shipment over a route carrying a higher rate than the rate in effect over another route reasonably available, additional transportation charges accrue. In these cases no such damage followed the routing of the shipments directly to Chicago, for the reason that under the rule referred to the lower combination of rates over the other route was applicable.

Charles Staff for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

H. A. Taylor and *H. Murray Andrews* for Erie Railroad Company and Chicago & Erie Railroad Company.

Charles B. Fernald for Pennsylvania Railroad Company and Pennsylvania Company.

McPherson, Bills & Streeter for Pere Marquette Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The first of the above-entitled complaints relates to a carload shipment of sugar-beet pulp, weighing 30,250 pounds, which was forwarded by the complainant on January 16, 1906, from Janesville, in the state of Wisconsin, to Cattaraugus, in the state of New York, and routed by the complainant via the Erie Despatch. The principal
17 I. C. C. Rep.

defendant has two lines from Janesville to Chicago, the direct line being 91 miles in length, while the indirect route, through Waukesha and Milwaukee, involves a haul of 162 miles. The shipment moved over the direct route to Chicago and thence, as routed by the shipper, over the Chicago & Erie Railroad and the Erie Railroad to destination, where charges were collected in the amount of \$54.15, apparently based upon the combination of the Class E rate of 6.09 cents per 100 pounds to Chicago and a commodity rate of 11 cents beyond.

The complainant's contention is that the shipment should have moved through Waukesha and Milwaukee, over which route a lower combination rate of 14 cents was in effect, made up of a proportional commodity rate of 3 cents to Waukesha and the 11-cent rate from Chicago to destination, which, under the tariffs, was applicable to Milwaukee and other 100-per-cent points, including Waukesha. It may be well to state that this rate of 11 cents was the grain and grain products rate which, under tariffs published by the defendants entitled "Exceptions to Official Classification," was made to apply specifically to sugar-beet pulp. While there is some doubt whether the rate was applicable to Cattaraugus upon this particular shipment, that doubt has since been removed by an amendment to the tariff, and therefore need not now be considered.

The complaint seems to be controlled by rule 215 of Conference Rulings Bulletin No. 4. The facts that resulted in that ruling were as follows: The same through rate was published from an eastern point of origin to both Chicago and Milwaukee, and on traffic to certain destinations beyond those points, reached by the same carrier either directly from Chicago or indirectly through Milwaukee, the through charges were made up by adding the local rate out of Chicago or Milwaukee to the through rate to either of those points. The distance from Milwaukee to destination being less than the haul from Chicago, the local rate out of Milwaukee was also less than the local out of Chicago. Although the shipment was carried through Chicago directly to destination, we held that the lower combination based on Milwaukee was, in the absence of a specific joint through rate, the legal rate to apply, and that it was not necessary in such a case that the shipment should have moved over the route carrying the lower combination. The important fact in the case was that the route from Chicago, whether directly to destination or through Milwaukee to destination, was over the lines of one and the same carrier.

The situation in the case before us differs from that case only in that the shipment here was eastbound instead of westbound. The same principle, however, controls. The only junction that the principal defendant has with the Erie Despatch is at Chicago. The direct route to that point as well as the indirect route through Wau-

kesha and Milwaukee are over the lines of the principal defendant. No specific joint through rate was in effect over either route. We therefore hold, under the authority of the rule cited, that the lower combination based on Waukesha was the legally applicable basis for making up the through charges, notwithstanding the fact that the shipment actually moved over the direct route to Chicago. The result is that the complainant has been overcharged on the shipment to the extent that the charges collected exceeded the combination rate of 14 cents based on Waukesha, and we so find. The amount of such overcharge must be refunded to the complainant with interest, the principal defendant to be charged with the difference between the revenue which, as we presume, it actually received under its class rate of 6.09 cents per 100 pounds to Chicago, and the revenue that it would have received on its local rate to Waukesha and its agreed division, if any, of the through rate beyond.

In assessing its charges, and as actually collected, the principal defendant seems to have computed its revenue at 6.9 cents when, under the Class E rate, it should have been computed at 6.09 cents per 100 pounds. This makes a further overcharge of \$2.40, which of course will be adjusted when the order herein entered is complied with.

In the second of these two complaints it appears that on January 2, 1906, the petitioner shipped one carload of the commodity in question, weighing 35,332 pounds, from Janesville to Windber, in the state of Pennsylvania. This shipment seems also to have moved over the direct line of the Chicago & North Western to Chicago, and charges were assessed and collected at destination in the sum of \$66.78, or at a rate of 18.9 cents per 100 pounds. We are unable to say on just what tariff authority this collection was made, but apparently it was based on the sum of the distance rate of 4½ cents to Chicago and the grain-products rate of 14½ cents beyond, the latter rate being made applicable to sugar-beet pulp, as already explained.

With respect to the transportation up to Chicago, this case differs from the one just considered only in that the shipper, apparently knowing of the lower combination rate on Waukesha, affirmatively routed the shipment through Milwaukee; but the principal defendant, instead of following the instructions, carried the shipment, as stated, over its direct line to Chicago, and there made delivery to the Pennsylvania Railroad, by which it was carried to destination. We intervene, however, in misrouting cases only when additional transportation charges accrue, either as the result of the failure of the carrier to obey the shipper's routing instructions or where, in the absence of such instructions, a more expensive route is used by the carrier than is available. In this case no such damage follows the

routing of the shipment directly to Chicago, for, as we have just held in the first of the above-entitled complaints, the lower rate from Janesville through Waukesha to Chicago, in the absence of a specific through rate from point of origin to destination, was also applicable over the direct route to Chicago in making up the through charges on the shipment. It follows, therefore, that there has been an overcharge on this shipment in the sum of \$4.95, which amount the complainant is entitled to recover, with interest, from the defendants on the same basis as is fixed in the foregoing case, No. 2273.

It may be well to note that although these complaints were filed in March and June, 1909, the claims were first lodged with the Commission informally on January 7, 1908.

An order will be entered in accordance with the findings herein.

17 I. C. C. Rep.

No. 1529.

MOUNTAIN ICE COMPANY ET AL.

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.

No. 1549.

SAME

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

No. 1631.

MOUNTAIN ICE COMPANY AND TROUT LAKE ICE
COMPANY

v.

ERIE RAILROAD COMPANY.

No. 1632.

SAME

v.

ERIE RAILROAD COMPANY ET AL.

Submitted November 30, 1909. Decided January 3, 1910.

1. It appears that defendants have in every instance complied with the orders of the Commission made in a former report upon these cases; upon supplemental complaints asking that defendants establish other rates put in issue by the original complaints but not passed on because of lack of testimony, and that the prior decision declining to reduce certain joint rates on ice to Philadelphia be reconsidered; *Held*, That (a) the present rates mentioned in case No. 1529 on ice from the Pocono Mountains and the Jersey lakes to Brooklyn terminals, Harlem station, and other points in New Jersey and New York; (b) the present rates mentioned in case No. 1549 on ice from the Pocono Mountains to Philadelphia, requiring Philadelphia & Reading deliveries, and to various points in New Jersey, Delaware, and Maryland; (c) the present rates mentioned in case No. 1631 on ice from Sterling Forest, N. Y., to various points in New Jersey and New York; and (d) the present rates mentioned in case No. 17 I. C. C. Rep.

1632 on ice from the Pocono Mountains to West Newark, N. J., and to other points in New Jersey and New York, are unreasonable and reasonable rates prescribed for the future.

2. Upon application of complainant, an examiner will be delegated to take testimony upon the various reparation claims involved in these cases, and upon that record the parties will be further heard and proper orders made.

H. C. Reynolds for complainants and interveners.

J. L. Seager for Delaware, Lackawanna & Western Railroad Company.

J. E. Reynolds for Central Railroad Company of New Jersey.

J. J. Beattie for Lehigh & Hudson River Railroad Company.

H. A. Taylor for Erie Railroad Company.

D. B. Griffin for Long Island Railroad Company.

Charles Heebner for Philadelphia & Reading Railroad Company and Atlantic City Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Commissioner:

In the original opinion in the above-entitled cases, 15 I. C. C. Rep., 305, the Commission considered rates from points of origin in New Jersey and in the Pocono Mountains to various destinations. As a result, rates were established to Hoboken, Jersey City, Philadelphia, and to points upon the Long Island Railroad, these being what might be termed base rates under which the great bulk of the traffic moved. The original complaints named a large number of points to which the rates were alleged to be excessive, but no testimony was introduced with respect to most of these points and the rates themselves were not discussed. The Commission suggested that the defendants should check in rates to these other points in conformity with the base rates which were established, stating that if this were not done the matter could be further called to its attention by supplemental complaint.

The defendants have in every instance complied with the orders of the Commission, but the complainant now files a supplemental petition in each of the above cases, claiming that the carriers have not established the other rates put in issue by the original complaints in accordance with the decision and opinion of the Commission, and asking that such rates be now established. It also asks that the Commission reconsider its decision in declining to reduce certain joint rates to Philadelphia in addition to the one fixed. The exact questions presented and our decision thereon will be best stated by considering the different cases separately.

In No. 1529 the Delaware, Lackawanna & Western is the sole defendant. That company previous to the making of our order in the original case had maintained rates to its various terminals in Brook-

lyn, the cars containing the ice being carried upon car floats from Hoboken to the Brooklyn terminals. The through charge for this service had been arrived at by adding to the rate up to Hoboken from both the Pocono Mountains and the New Jersey lakes, 25 cents per ton for lighterage. The Commission reduced the rate from the Pocono Mountains from 85 cents per ton to 65 cents per ton when transported in ordinary box cars and 75 cents per ton when transported in ice cars. These rates, as already stated, were put in by the defendant, but its rates to Brooklyn terminals were left as they had been in the past, namely, from the Pocono Mountains \$1.10 and from New Jersey points 85 cents. The complainant insists that reductions should be made in these Brooklyn rates corresponding with our reductions in the Hoboken rates—that is, that the Brooklyn rate from the Pocono Mountains should be 90 cents per ton when transported in ordinary box cars and \$1 per ton when transported in ice cars; from the New Jersey lakes, 75 cents per ton when transported in ordinary box cars and 80 cents per ton when transported in ice cars.

The defendant claims that its lighterage service actually costs it in excess of 25 cents per ton and that therefore it does not follow that it should be required to reduce the rate to its Brooklyn terminals as claimed by the complainant. Testimony bearing upon the cost of lighterage was introduced by both parties.

We are of the opinion that the rates above given from the Pocono Mountains and the Jersey lakes are unreasonable, and that reasonable rates on ice to these Brooklyn terminals and the Harlem station of the defendant would be from the Pocono Mountains, not exceeding 90 cents per ton, when transported in ordinary box cars and \$1 per ton when transported in ice cars; from the lakes of New Jersey 75 cents per ton when transported in ordinary box cars and 85 cents per ton when transported in ice cars.

The complainant also asks that rates be established to stations on the South Brooklyn Railway, but this railroad is not a party to these proceedings and it appears that the complainant already enjoys a satisfactory rate in connection with the Erie from both the Pocono Mountains and the Jersey lakes to these points. We must decline, therefore, to express an opinion upon rates to such points in connection with the Delaware, Lackawanna & Western.

The complainant states that a rate of 85 cents per ton from Pocono Mountains is charged to the following points: Murray Hill, Berkley Heights, Gillette, Stirling, Millington, Lyons, Basking Ridge, Bernardsville, Mine Brook, Far Hills, Peapack, Gladstone, Kenvil, Succasuma, Ironia, Chester, Andover, Newton, Franklin Furnace, Lafayette, Augusta, Branchville, and Changewater, which is excessive and ought not to exceed 65 cents. It also alleges that the rate of 60 cents to Delaware is excessive.

Of these points, Changewater and Delaware are on that line of the Delaware, Lackawanna & Western over which this ice is transported to Hoboken, and the distances are materially less than to Hoboken.

We are of the opinion that the present rate from the Pocono region to Changewater, as above stated, is unreasonable and that it ought not to exceed 65 cents when the transportation is in ordinary box cars and 75 cents in ice cars; that the rate to Delaware is excessive and ought not to exceed 55 cents when the transportation is in ordinary box cars and 60 cents when in ice cars.

The other points referred to are upon the Morris & Essex division of the defendant or upon branch lines. In all cases the cars must be set out of the ice trains and taken by other trains to destination. It by no means follows that although the distance may be less than to Hoboken the rate should be no higher. The circumstances of the movement are entirely different, as well as the competitive conditions. We are, however, of the opinion that the rates charged as above stated should be somewhat revised; that the present rates are unreasonable and ought not to exceed 75 cents per ton in ordinary box cars and 85 cents per ton in ice cars.

While we have somewhat reduced the rate to the points referred to in the last paragraph, we do not find that the rates charged have been unjust or unreasonable in the past, and no reparation will be allowed on account of ice transported to these destinations.

The complainant also asks us to consider the rates from the Pocono Mountains to Corning and Dansville, N. Y. These points are to the west of the mountains and this case does not disclose the circumstances under which the ice is handled. We must therefore decline to express any opinion upon these rates as not being fairly within the scope of the original proceeding, nor presented to the Commission in this proceeding in such a way that an intelligent opinion can be given.

In No. 1549, which is against the Delaware, Lackawanna & Western Railroad Company and others, the complainant asks us to reconsider our refusal to reduce the rate from the Pocono Mountains to Philadelphia via Phillipsburg.

In the original case four different routes from the Pocono Mountains to Philadelphia were referred to, two from points upon the Delaware, Lackawanna & Western and two from points upon the Erie. It appeared that the great bulk of the traffic moved over the Delaware, Lackawanna & Western, via Manunka Chunk in connection with the Pennsylvania Railroad, by which route solid ice trains were operated during the season. The Commission reduced the rate via this route and stated that inasmuch as the complainant was thereby given access to the Philadelphia market from the greater part of its ice houses, it would not require the handling of this ice by the other routes upon a

reduced rate, although competition might lead to a voluntary reduction of that rate.

The evidence now before us shows that while the bulk of the traffic does move via Manunka Chunk, and while a special service is maintained, still only Pennsylvania deliveries can be obtained in Philadelphia via that route. It appears that a considerable quantity of ice is moved to Philadelphia requiring a Philadelphia & Reading delivery, which can only be obtained in connection with the route via Phillipsburg. The movement via this route leaves the main line of the Delaware, Lackawanna & Western at Washington Junction, is thence taken on a branch line to Phillipsburg, from which it is transported to Bethlehem via the Central of New Jersey, and there delivered to the Philadelphia & Reading. No special service is maintained via this route, cars being given only such expedition as can be had by placing them in the regular trains. Nevertheless considerable quantities of ice have moved by this route in the past and continue to move, although the rate is higher than via Manunka Chunk. The distance via this route is 134 miles, nearly 10 miles shorter than via Manunka Chunk.

We are of the opinion that as the case is now presented these Philadelphia & Reading deliveries ought to be open to the complainant, that the present rate of \$1.40 via this route is unreasonable, and that the rate ought not to exceed for the future \$1.20 when the movement is in ordinary box cars and \$1.35 when the movement is in ice cars. This reduction should be applied at all intermediate points.

The complainant alleges that the following rates to the following points now in effect are excessive:

To—	Rate.	To—	Rate.
Newark, N. J.	\$1.10	Long Branch, N. J.	\$1.45
Waverly, N. J.	1.25	Elberon, N. J.	1.45
Elizabeth, N. J.	1.25	Asbury Park, N. J.	1.45
Linden, N. J.	1.25	Ocean Grove, N. J.	1.45
Rahway, N. J.	1.25	Belmar, N. J.	1.70
Woodbridge, N. J.	1.30	Spring Lake, N. J.	1.70
Perth Amboy, N. J.	1.30	Point Pleasant, N. J.	1.70
Metuchen, N. J.	1.25	Gloucester, N. J.	1.40
New Brunswick, N. J.	1.25	Swedesboro, N. J.	1.70
Trenton, N. J., via C. of N. J. and P. & R.	1.25	Paulsboro, N. J.	1.80
Freehold, N. J.	1.45	Pedricktown, N. J.	1.80
Delanco, N. J.	1.40	Penn's Grove, N. J.	1.80
Riverside, N. J.	1.40	Glassboro, N. J.	1.65
Beverly, N. J.	1.40	Pleasantville, N. J.	1.95
Riverton, N. J.	1.40	Bakersville, N. J.	1.95
Pavonia, N. J.	1.40	Somers Point, N. J.	1.95
Elizabethport, N. J.	1.70	Ocean City, N. J.	1.95
Camden, N. J.	1.40	Angelsea, N. J.	1.95
West Moorestown, N. J.	1.65	Holly Beach, N. J.	1.95
Mount Holly, N. J.	1.65	Collingswood, N. J.	1.60
Medford, N. J.	1.65	Darby, Pa.	1.65
Barnegat City, N. J.	2.40	Chester, Pa.	1.65
Beach Haven, N. J.	2.40	Wilmington, Del.	1.65
Matawan, N. J.	1.45	Newark, Del.	1.90
Hazlet, N. J.	1.45	Elkton, Md.	1.90
Red Bank, N. J.	1.45	Havre de Grace, Md.	1.90
Little Silver, N. J.	1.45	Baltimore, Md.	1.90

The above points are reached by various routes at various distances. The amount of this traffic moving to any one point is comparatively small. In no case is the service an expedited one, the cars of ice being simply handled in the first train which can carry them. It would not be profitable to point out in detail the routes or the distances. In our opinion the rates on ice now in effect are unreasonable and should not exceed the following per ton when transported in ordinary box cars:

To—	Rate.	To—	Rate.
Newark, N. J.	\$0. 95	Long Branch, N. J.	\$1. 25
Waverly, N. J.	1. 05	Elberon, N. J.	1. 25
Elizabeth, N. J.	1. 05	Asbury Park, N. J.	1. 25
Linden, N. J.	1. 05	Ocean Grove, N. J.	1. 25
Rahway, N. J.	1. 05	Belmar, N. J.	1. 50
Woodbridge, N. J.	1. 10	Spring Lake, N. J.	1. 50
Perth Amboy, N. J.	1. 10	Point Pleasant, N. J.	1. 50
Metuchen, N. J.	1. 05	Gloucester, N. J.	1. 20
New Brunswick, N. J.	1. 05	Swedesboro, N. J.	1. 50
Trenton, N. J., via C. of N. J. and P. & R.	1. 05	Paulsboro, N. J.	1. 55
Freehold, N. J.	1. 25	Pedricktown, N. J.	1. 55
Delanco, N. J.	1. 20	Penn's Grove, N. J.	1. 55
Riverside, N. J.	1. 20	Glassboro, N. J.	1. 45
Beverly, N. J.	1. 20	Pleasantville, N. J.	1. 75
Riverton, N. J.	1. 20	Bakersville, N. J.	1. 75
Pavonia, N. J.	1. 20	Somers Point, N. J.	1. 75
Elizabethport, N. J.	1. 50	Ocean City, N. J.	1. 75
Camden, N. J.	1. 20	Angelsea, N. J.	1. 75
West Moorestown, N. J.	1. 45	Holly Beach, N. J.	1. 75
Mount Holly, N. J.	1. 45	Collingswood, N. J.	1. 40
Medford, N. J.	1. 45	Darby, Pa.	1. 45
Barnegat City, N. J.	2. 10	Chester, Pa.	1. 45
Beach Haven, N. J.	2. 10	Wilmington, Del.	1. 45
Matawan, N. J.	1. 25	Newark, Del.	1. 70
Hazlet, N. J.	1. 25	Elkton, Md.	1. 70
Red Bank, N. J.	1. 25	Havre de Grace, Md.	1. 70
Little Silver, N. J.	1. 25	Baltimore, Md.	1. 70

When ice cars are used, 10 cents may be added in case of the rate to Newark, N. J., making a rate of \$1.05, and in all other cases 15 cents may be added to the rate.

In No. 1631 the Commission established rates via the Erie Railroad from Sterling Forest, in the state of New York, to Jersey City, and also to points upon the Long Island Railroad. By the supplemental complaint we are now asked to apply the rates fixed for Jersey City to various other points in that vicinity, which may roughly be described as located upon the Bergen County Branch, the Newark Branch, the Piermont Branch, the Newburg & New York Branch, the Newburg Branch, the Montgomery Branch, Pine Island Branch, Middletown & Crawford Branch, Northern Railroad of New Jersey, New York, Susquehanna & Western Railroad, New Jersey & New York Railroad and New City Branch.

These various branches for the most part radiate from Bergen Junction, and ice from Sterling Forest, in reaching the destinations under consideration, ordinarily moves over the Greenwood Lake Branch to Bergen Junction and thence out. In many cases, perhaps in the majority of cases, it would be possible to find another and shorter route through some other junction point, but the convenient and

probably the economical way of handling this business is to haul the train load of ice to Bergen Junction and there divide it for these various stations. As a practical matter the haul to most of these points is longer than that to Bergen Junction or Jersey City.

The conditions governing the rate are also radically different. We feel that while in the past the rate maintained to these points from Sterling Forest has been the same as that to Jersey City, a somewhat higher charge may properly be imposed but that the rates should be slightly readjusted in line with those elsewhere established. Upon a consideration of all the facts, we are of the opinion that the present rates of the defendant from Sterling Forest to the points below named are unreasonable, that they ought not to exceed in cents per ton, when transported in ordinary box cars, the figures below named in the first column, and when transported in ice cars, the figures named in the second column.

To—	In box cars.	In ice cars.	To—	In box cars.	In ice cars.
Secaucus, N. J.	\$0.55	\$0.60	Craigville, N. Y.	\$0.80	\$0.90
Rutherford, N. J.	.55	.60	Washingtonville, N. Y.	.80	.90
Carlton Hill, N. J.	.55	.60	Salisbury Mills, N. Y.	.80	.90
Garfield, N. J.	.55	.60	Vails Gate, N. Y.	.80	.90
Dundee, N. J.	.55	.60	New Windsor, N. Y.	.80	.90
Warren Point, N. J.	.60	.70	Newburgh, N. Y.	.80	.90
Fairlawn, N. J.	.60	.70	Chester, N. Y.	.80	.90
Passaic, N. J.	.55	.60	Goshen, N. Y.	.80	.90
Clifton, N. J.	.60	.70	Kipps, N. Y.	.80	.90
Lake View, N. J.	.60	.70	Campbell Hall, N. Y.	.80	.90
Harrison, N. J.	.60	.70	Neely Town, N. Y.	.80	.90
Newark, N. J.	.60	.70	Montgomery, N. Y.	.80	.90
Woodside, N. J.	.60	.70	Orange Farm, N. Y.	.80	.90
Belleville, N. J.	.60	.70	Florida, N. Y.	.80	.90
Essex, N. J.	.60	.70	Big Island, N. Y.	.80	.90
Avondale, N. J.	.60	.70	Pine Island, N. Y.	.80	.90
West Nutley, N. J.	.60	.70	New Hampton, N. Y.	.80	.90
Athenia, N. J.	.60	.70	Circleville, N. Y.	.80	.90
Paterson, N. J., via Newark Branch	.60	.70	Bullville, N. Y.	.80	.90
Hawthorne, N. J., via Newark Branch	.60	.70	Thompson Ridge, N. Y.	.80	.90
Ferndale, N. J.	.80	.90	Van Kuren, N. Y.	.80	.90
Ridgewood, N. J.	.80	.90	Pine Bush, N. Y.	.80	.90
Waldwick, N. J.	.80	.90	Middletown, N. Y.	.80	.90
Allendale, N. J.	.80	.90	Homestead, N. J.	.55	.60
Ramsey, N. J.	.80	.90	New Durham, N. J., via Nor. R.		
Mahwah, N. J.	.80	.90	Id. of N. J.	.55	.65
Suffern, N. Y.	.80	.90	Fairview, N. J.	.55	.65
Tallmans, N. Y.	.80	.90	Ridgefield, N. J.	.55	.65
Monsey, N. Y.	.80	.90	Locust, N. J.	.55	.65
Spring Valley, N. Y.	.80	.90	Northhoff, N. J.	.55	.65
Nanuet, N. Y.	.80	.90	Englewood, N. J.	.55	.65
Blauvelt, N. Y.	.80	.90	Highwood, N. J.	.55	.65
Orangeburg, N. Y.	.80	.90	Tenafly, N. J.	.55	.65
Sparkill, N. Y.	.80	.90	Crosskill, N. J.	.55	.65
Piermont, N. Y.	.80	.90	Demarest, N. J.	.80	.90
Hillburn, N. Y.	.80	.90	Closter, N. J.	.80	.90
Ramapo, N. Y.	.80	.90	Norwood, N. J.	.80	.90
Sterlington, N. Y.	.80	.90	Nack, N. Y.	.80	.90
Sloatsburg, N. Y.	.80	.90	Homestead, N. J.	.55	.60
Tuxedo, N. Y.	.80	.90	New Durham, N. J., via N. Y. & W. R. R.	.55	.60
Southfield, N. Y.	.80	.90	Little Ferry, N. J.	.55	.60
Arden, N. Y.	.80	.90	Ridgefield Park, N. J.	.55	.60
Central Valley, N. Y.	.80	.90	Bogota, N. J.	.55	.60
Highland Mills, N. Y.	.80	.90	Hackensack, N. J., via N. Y. & W. R. R.	.55	.60
Woodbury, N. Y.	.80	.90	W. R. R.	.55	.60
Houghton Farm, N. Y.	.80	.90	Lodi, N. J.	.80	.90
Mountainville, N. Y.	.80	.90	Maywood, N. J.	.55	.60
Cornwall, N. Y.	.80	.90	Rochelle Park, N. J.	.55	.65
Vails Gate Junction, N. Y.	.80	.90	Passaic Junction, N. J.	.55	.60
Turner, N. Y.	.80	.90	Dundee, N. J.	.55	.60
Monroe, N. Y.	.80	.90	Passaic, N. J.	.55	.60
Oxford Depot, N. Y.	.80	.90	Dundee Lake, N. J.	.55	.60

To—	In box cars.	In ice cars.	To—	In box cars.	In ice cars.
Paterson, N. J., via N. Y. S. & W. R. R.	\$0.55	\$0.60	Marksboro, N. J.	\$0.65	\$0.75
Straight Street, N. J.	.55	.60	Blairstown, N. J.	.65	.75
Vreeland Avenue, N. J.	.55	.60	Vails, N. J.	.65	.75
Broadway, N. J.	.55	.60	Hainesburg, N. J.	.65	.75
Riverside, N. J.	.55	.60	Delaware, N. J.	.65	.75
Hawthorne, N. J., via N. Y. S. & W. R. R.	.55	.60	Columbia, N. J.	.65	.75
North Paterson, N. J.	.55	.60	Dunfield, N. J.	.65	.75
Midland Park, N. J.	.55	.60	Water Gap, Pa.	.65	.75
Wortendyke, N. J.	.55	.60	Stroudsburg, Pa.	.65	.75
Wyckoff, N. J.	.55	.60	Carlstadt, N. J.	.55	.60
Campgaw, N. J.	.55	.60	Woodridge, N. J.	.60	.70
Crystal Lake, N. J.	.55	.60	Hasbrouck Heights, N. J.	.60	.70
Oakland, N. J.	.55	.60	Hackensack, N. J., via N. Y. & N. J. R. R.	.60	.70
Pompton Lakes, N. J.	.55	.60	Essex Street, N. J.	.60	.70
Pompton Junction, N. J.	.55	.60	Central Avenue, N. J.	.60	.70
Bloomington, N. J.	.60	.70	Anderson Street, N. J.	.60	.70
Butler, N. J.	.60	.70	Fairmount Avenue, N. J.	.60	.70
Charlotteburg, N. J.	.60	.70	North Hackensack, N. J.	.65	.75
Newfoundland, N. J.	.60	.70	River Edge, N. J.	.65	.75
Oak Ridge, N. J.	.60	.70	New Milford, N. J.	.65	.75
Stockholm, N. J.	.65	.75	Oradell, N. J.	.65	.75
Ogdensburg, N. J.	.65	.75	Etna, N. J.	.65	.75
Franklin Furnace, N. J.	.65	.75	Westwood, N. J.	.65	.75
Hamburg, N. J.	.65	.75	Hillsdale, N. J.	.65	.75
Martins, N. J.	.65	.75	Woodcliff Lake, N. J.	.65	.75
Sussex, N. J.	.65	.75	Park Ridge, N. J.	.65	.75
Quarryville, N. J.	.65	.75	Montvale, N. J.	.65	.75
Unionville, N. Y.	.65	.75	Pearl River, N. Y.	.80	.90
West Town, N. Y.	.65	.75	Bardonia, N. Y.	.80	.90
Johnsons, N. Y.	.65	.75	New City, N. Y.	.80	.90
Slate Hill, N. Y.	.65	.75	Union, N. Y.	.80	.90
Sparta, N. J.	.65	.75	Summit Park, N. Y.	.80	.90
Sparta Junction, N. J.	.65	.75	Pomona, N. Y.	.80	.90
Warbasse, N. J.	.65	.75	Mount Ivy, N. Y.	.80	.90
Halsey, N. J.	.65	.75	Thiells, N. Y.	.80	.90
Swartswood, N. J.	.65	.75	West Haverstraw, N. Y.	.80	.90
Stillwater, N. J.	.65	.75	Haverstraw, N. Y.	.80	.90

While the rates last above referred to are somewhat less than those in effect since 1907, we do not find that the rates which have been charged in the past are excessive and no reparation will be awarded on account of shipments to these stations.

It is impossible to determine from an inspection of the record what the complainant asks for or what relief this Commission can properly grant in No. 1632. The original complaints in 1631 and 1632 were apparently confused, and the subsequent amendments and references thereto in the supplemental complaint in 1632 only aggravate that confusion.

There seems to be a distinct claim that the rate from mountain regions to West Newark is excessive, and upon this point testimony was introduced. We are of the opinion that the present rate of \$1.10 per ton is unreasonable, that the rate ought not to exceed 90 cents per ton when the movement is in box cars and \$1 per ton in ice cars.

The complaint also puts in issue rates to the points referred to in 1631 when the movement is from the Pocono Mountains. In 1631 rates were established from Sterling Forest and we are now asked to establish rates to the same points from the Pocono Mountains. From Sterling Forest the movement is via the Greenwood Lake Branch and Bergen Junction, while from the Pocono Mountains the movement is via the New York, Susquehanna & Western to Bergen

Junction. The movement from Bergen Junction is in each case the same.

It appears that in the past the Jersey City rate has been applied at these interior points, and the complainant insists that the Commission should make the same reduction at these points which it has made to Jersey City.

What has been said in No. 1631 with reference to the movement from Sterling Forest to these points applies equally with respect to the movement from the Pocono Mountains. Somewhat higher rates may properly be maintained to these destinations than to Jersey City, but some readjustment of the present rates should be made.

In our opinion the present rates from the Pocono Mountains to these points are unreasonable, and rates in cents per net ton not exceeding those mentioned in the first column in the following table should be applied when the movement is in box cars, and rates not exceeding those in the second column when the movement is in ice cars:

To—	In box cars.	In ice cars.	To—	In box cars.	In ice cars.
Ferndale, N. J.	\$0.85	\$0.95	Van Keurens, N. Y.	\$0.85	\$0.95
Ridgewood, N. J.	.85	.95	Pine Bush, N. Y.	.85	.95
Waldwick, N. J.	.85	.95	Carlstadt, N. J.	.75	.85
Allendale, N. J.	.85	.95	Woodridge, N. J.	.75	.85
Ramseys, N. J.	.85	.95	Hasbrouck Heights, N. J.	.75	.85
Mahwah, N. J.	.85	.95	Hackensack, N. J.	.75	.85
Suffern, N. Y.	.85	.95	Essex Street, N. J.	.75	.85
Tailmans, N. Y.	.85	.95	Central Avenue, N. J.	.75	.85
Monsey, N. Y.	.85	.95	Anderson Street, N. J.	.75	.85
Blauvelt, N. Y.	.85	.95	Fairmont Avenue, N. J.	.75	.85
Orangeburg, N. Y.	.85	.95	North Hackensack, N. J.	.85	.95
Sparkill, N. Y.	.85	.95	River Edge, N. J.	.85	.95
Piermont, N. Y.	.85	.95	New Millford, N. J.	.85	.95
Hillburn, N. Y.	.85	.95	Oradell, N. J.	.85	.95
Ramapo, N. Y.	.85	.95	Etna, N. J.	.85	.95
Sterlington, N. Y.	.85	.95	Westwood, N. J.	.85	.95
Sloatsburg, N. Y.	.85	.95	Hillsdale, N. J.	.85	.95
Tuxedo, N. Y.	.85	.95	Woodcliff Lake, N. J.	.85	.95
Southfield, N. Y.	.85	.95	Park Ridge, N. J.	.85	.95
Arden, N. Y.	.85	.95	Montvale, N. J.	.85	.95
Central Valley, N. Y.	.85	.95	Pearl River, N. Y.	.85	.95
Highland Mills, N. Y.	.85	.95	Nanuet, N. Y.	.85	.95
Woodbury, N. Y.	.85	.95	Bardonia, N. Y.	.85	.95
Houghton Farm, N. Y.	.85	.95	New City, N. Y.	.85	.95
Mountainville, N. Y.	.85	.95	Spring Valley, N. Y.	.85	.95
Cornwall, N. Y.	.85	.95	Union, N. Y.	.85	.95
Vails Gate Junction, N. Y.	.85	.95	Summit Park, N. Y.	.85	.95
Turner, N. Y.	.85	.95	Pomona, N. Y.	.85	.95
Monroe, N. Y.	.85	.95	Mount Ivy, N. Y.	.85	.95
Oxford Depot, N. Y.	.85	.95	Thiells, N. Y.	.85	.95
Craigville, N. Y.	.85	.95	West Haverstraw, N. Y.	.85	.95
Washingtonville, N. Y.	.85	.95	Haverstraw, N. Y.	.85	.95
Salisbury Mills, N. Y.	.85	.95	Homestead, N. J.	.75	.85
Vails Gate, N. Y.	.85	.95	New Durham, N. J.	.75	.85
New Windsor, N. Y.	.85	.95	Fairview, N. J.	.75	.85
Newburgh, N. Y.	.85	.95	Ridgefield, N. J.	.85	.95
Chester, N. Y.	.85	.95	Morsemere, N. J.	.85	.95
Goshen, N. Y.	.85	.95	Pallades Park, N. J.	.85	.95
Kipps, N. Y.	.85	.95	Leonla, N. J.	.85	.95
Campbell Hall, N. Y.	.85	.95	Nordhoff, N. J.	.85	.95
Neely Town, N. Y.	.85	.95	Englewood, N. J.	.85	.95
Montgomery, N. Y.	.85	.95	Highwood, N. J.	.85	.95
Orange Farm, N. Y.	.85	.95	Tenafly, N. J.	.85	.95
Florida, N. Y.	.85	.95	Cremkill, N. J.	.85	.95
Big Island, N. Y.	.85	.95	Demarest, N. J.	.85	.95
Pine Island, N. Y.	.85	.95	Closter, N. J.	.85	.95
New Hampton, N. Y.	.85	.95	Norwood, N. J.	.85	.95
Circleville, N. Y.	.85	.95	Piermont, N. J.	.85	.95
Bullville, N. Y.	.85	.95	Nyack, N. Y.	.85	.95
Thompson Ridge, N. Y.	.85	.95			

No reparation will be allowed on account of shipments to the destinations specified in the above table.

With respect to all stations to which rates are not fixed by the orders of the Commission, either in the original proceedings or at this time, these complaints are dismissed.

The original complainants have filed schedules setting forth the shipments as to which reparation is claimed, in so far as the Commission had previously determined the rates upon which reparation should be awarded. Certain other parties have filed intervening petitions claiming reparation. With respect both to the schedules filed by the original complainants and the intervening petitions, certain questions are raised by the defendants, but none of these can be passed upon at this time. The basis for reparation has now been stated in all cases. Upon application of the complainant, an examiner will be delegated to take testimony upon the various claims for reparation, and upon that record the parties will be further heard and the proper orders made.

17 I. C. C. Rep.

No. 2398.

EDWARD D. MURPHY AND WILLIAM P. MURPHY,
COPARTNERS, TRADING AS MURPHY BROTHERS,

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY.

No. 2396.

JOSEPH J. WIFFLER

v.

SAME.

Submitted December 10, 1909. Decided January 3, 1910.

Claim for reparation, on account of demurrage charges for detention of cars beyond the free time computed from 7 a. m. on the day succeeding the sending of notice, by the carrier, of arrival of cars, denied.

George C. Coffin for complainants.

O. E. Butterfield for New York Central & Hudson River Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainants claim reparation on account of demurrage and track-storage charges alleged to have been assessed contrary to the car-service rules of defendant on cars received at Melrose Station, New York City, during the two years prior to the filing of complaint on April 22, 1909. The delay in unloading, which is the basis of some of the charges, it is alleged, was due to weather conditions. At the hearing it appeared the rules provided that claims of this character should be submitted to the carrier for adjustment; that this course was pursued as to such claims during 1907, as to which defendant in fact offered to refund \$3 more than was claimed, but, pending this controversy, complainant declined settlement. Defendant expressed its willingness to consider any claim of this character arising subsequent to 1907, and complainant thereupon temporarily withdrew this part of the complaint, and it is therefore not here considered.

The other claims arising up to and including November 30, 1907, are governed by the car-service rules of defendant, as follows:

On cars consigned direct to team or private tracks, or which may be so delivered on standing or advance orders from consignees, car service will be charged after the expiration of forty-eight (48) hours from the time such cars are placed on the tracks designated.

The question of notice of the arrival of freight will not be taken into consideration in settlement of claims.

These rules were superseded December 1, 1907, by the following, which remained effective until April 30, 1908:

Time will be computed from the first 7 a. m. after notice of arrival when cars are held for orders, otherwise from the first 7 a. m. after placement when cars are placed for unloading. Prompt notice will be given consignee in either case.

The last-named rules were on May 1, 1908, superseded by the following, which has since continued in effect:

Time will be computed from the first 7 a. m. after arrival (see rule 9) when cars are held for orders, otherwise from the first 7 a. m. after placement (see rule 3) when cars are placed for unloading. Prompt notice will be given consignee in either case.

Rules 9 and 3 do not affect the question.

Forty-eight hours free time is provided, and the question is, When does that free time commence?

It will be noticed that the rules in effect prior to December 1, 1907, provide that car service will be charged after the expiration of forty-eight hours from the time such cars are placed on the tracks designated, and no provision of any character is made for notice to the consignee, and in the subsequent rules that time will be computed from "the first 7 a. m. after placement," and "prompt notice will be given consignee."

It has been the practice of the carrier to notify consignees by mail of the arrival of cars at this station. Complainants' contention is that under the rules the free time does not commence until the first 7 a. m. after they have actually received the notice that the cars are placed and ready for unloading. Defendant contends that free time commences from the placement of the cars.

Complainants claim that 90 per cent of the notices of arrival of their freight were received by them in the morning mail at 8 or 8.30 o'clock subsequent to the mailing of notice. As to a large number of the cars forming the basis of claim, complainants offered no evidence whatever, their witnesses testifying that the written notices of arrival had been lost and they could give no specific evidence as to the time of their receipt. As to many of the others, where the notices of arrival were filed, no evidence as to the time of their receipt was submitted. As to other claims, they filed the notices and testified that a memorandum on each of such notices was made at the time of its receipt.

Complainants insist, as 90 per cent of the notices were received in the morning, that is a fact upon which the Commission should find that 90 per cent of the cars, about which they had no specific evidence as to receipt of notice, were received in the morning and should award reparation accordingly. The agent of the carrier, who mailed these notices, testified that approximately half were mailed about noon and the other half at night. In the absence of specific proof as to each car the Commission could not award reparation. Furthermore, the evidence discloses that the warehouse of complainants is located across the street and not 50 yards distant from the freight yard. Defendant's agent testified that he has a clerk who keeps a list of all cars coming into the yard each day and that it is the common practice for consignees to come into its office with a list of cars which they are expecting, such list probably being made up from bills of lading in possession of consignees, and to inquire if the cars are in the yard; that this clerk compares such lists with the list of the daily receipt of cars, and if those, the arrival of which consignees have not had notice, are in the yard, he calls attention to the same. This agent testified positively that during the entire period covered by this complaint one of the members of complainant firm came into his office four or five times every week, seeking information as outlined above, that he secured the information, and that complainants must have been fully advised practically every day of the arrival of cars in which they were interested. Complainants deny that they entered the office for that purpose. Under all the circumstances, these complainants being experienced business men and located just across the street from the office of defendant, and it being uncontradicted that other consignees go into this office for similar information, we are inclined to the belief that the complainants did obtain like information in the same manner.

Reverting to the question of when free time commences, it is certain that the rules in force up to December 1, 1907, did not provide for notice of *any character* to the shipper, and those in force subsequent to that date in terms only provide that prompt notice shall be *given*, but whether of arrival or *placement* is not clear. Hence the question arises, whether the free time should commence when the notice is *sent* by the carrier or when *received* by the consignee. The difficulties and complications that might arise from a rule fixing the time as beginning with the *receipt* of notice by the consignee may well be realized, as that is a matter entirely beyond the control of the carrier and dependent largely upon the varying business methods of consignees. All that the carrier can reasonably be required to do is to *send* the notice. Some consignees having private boxes would receive their mail at one hour and those depending upon the postman at another; therefore to hold that the free time commences upon the actual *receipt* of notice

by the consignee would result in much conflict and confusion, rendering difficult, if not impossible, a uniform application of the rule.

The matter of demurrage has been under investigation for more than a year by a committee of the National Association of Railway Commissioners, of which a member of the Interstate Commerce Commission was chairman. This committee held sessions in different places throughout the country, and has had a voluminous correspondence with those representing practically all interests. The code of demurrage rules carefully prepared by this committee was adopted by the association at its convention in Washington in November, 1909, as the best solution of this matter involving many difficult problems. On the question involved in this complaint, these proposed rules provide as follows:

On cars held for unloading time will be computed from the first 7 a. m. after placement on public-delivery tracks and after the day on which notice of arrival is sent to consignee.

From the foregoing it is evident that this committee and association have deemed it inadvisable to recommend a provision for calculating time from the hour of receipt of notice by consignees, but have recommended that the time should be computed from the first 7 a. m. after the day on which notice of arrival is sent. Upon the whole it appears that the above rule is reasonable.

Some question is made by complainants of the station agent's testimony as to the notice having been sent not on the placement of cars, but on their "arrival" in the yard. The testimony of the agent was very clear on this subject. He said that when the cars arrived in the yard he immediately issued the notice of arrival in order that consignees might have every opportunity to secure their cars expeditiously; that it was both to the interest of the consignee and the railroad that the cars should be unloaded; and that he did not issue a further notice of actual placement, but that as a matter of fact in substantially every case cars were actually placed before the notice of arrival was received by consignee, and upon request any car could be placed in a few minutes.

The complaint will be dismissed.

In Case No. 2396, petitioner receives freight at Yonkers, N. Y., instead of Melrose freight yard. Mail is received by petitioner through his private box in the post-office at Yonkers. However, the questions involved are the same as in No. 2398, and this case is therefore dismissed for the same reasons.

No. 2087.
 ARMOUR CAR LINES
 v.
 SOUTHERN PACIFIC COMPANY.

Submitted November 3, 1909. Decided January 3, 1910.

Complainant contracted to furnish ice to defendant at sundry points on its line to be used in the refrigeration of perishable fruit shipments. It was agreed by the parties that a \$1.90-per-ton rate should be established for shipments of ice from Los Angeles, Cal., to Yuma, Ariz. The published rate between the points named was \$3 per ton. The \$1.90 rate was not published until some months after the contract was made and not until 71 cars of ice had been shipped under the contract. On claim for reparation of the difference between the \$1.90 rate and the \$3 rate, *Held*, That such a transaction is repugnant to the provisions of the act to regulate commerce, opens the door for the grossest form of favoritism and rebating, and presents no basis for reparation.

Alfred S. Urion and H. K. Crafts for complainant.
F. C. Dillard for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This complaint is that defendant's rate of \$3 per ton for the transportation of ice in carloads from Los Angeles, Cal., to Yuma, Ariz., in effect prior to August 4, 1907, was unreasonable to the extent that it exceeded \$1.90 per ton, the rate made effective on that date. Reparation is asked on shipments moving under the higher rate.

During the year 1907, complainant was under contract with the defendant to furnish it ice at sundry stations on its line in California and elsewhere—to be used in the refrigeration of perishable fruit shipments. From April 1 to August 4, 1907, complainant shipped from Los Angeles to Yuma 71 carloads of ice, weighing in the aggregate 2,956,670 pounds, for the transportation of which defendant collected, on the basis of the said \$3 rate, the sum of \$4,432.06.

It is also shown that in March, 1907, when the contract above referred to was made, the rate to Yuma was \$3 and that complainant then protested against it as being unreasonable, whereupon complainant was assured by the defendant that the rate would be reduced promptly to \$1.90. This, however, was not done until August 4, 1907, after all the shipments in question had moved.

The facts are admitted by defendant to be as above stated, and failure to publish promptly the rate of \$1.90 in accordance with its agreement is stated to have been due to an error or oversight in its tariff department. The record discloses that January 16, 1908, the defendant filed an informal request with the Commission that it be permitted to pay reparation to the complainant herein in the sum represented by the difference between the \$3 rate and the \$1.90 rate. This request was denied by the Commission. Subsequently, the formal complaint now under consideration was filed.

The assistant general freight agent of the defendant gives the history of the rates on ice for refrigerating purposes as follows:

About April 4, 1907, defendant's agents in the state of California were instructed to protect a rate of \$1.25 per ton on ice shipped from producing points to icing points in the state; that the defendant's understanding at that time was that it had the right to make such a rate without publication of tariffs, treating the ice as company material; that on or about April 8, 1907, the \$1.25 rate was extended to apply to Yuma as a California point; that on May 16, 1907, this rate was withdrawn, it being noted that Yuma was situated in Arizona; and that on November 27, 1907, the rate of \$1.25 per ton applying between points in California was provided for in Southern Pacific Company billing order No. 178, superseded January 29, 1908, by billing order No. 422, which provided for the same rate and same conditions as to its application. Neither of these billing orders was filed with this Commission for the reason that they applied only to intrastate shipments. This rate was applied by defendant until May 25, 1909, when it was increased to \$3 per ton. This \$3 rate applied to Colorado City, Cal., across the river from Yuma, and was applicable to points intermediate, Los Angeles to Colorado City. The \$3 rate applicable to California points is still in effect.

It is stated by counsel for the complainant that the contract for supplying ice to defendant was made in view of the \$1.90 rate that had been promised it. Freight bills filed in support of this claim show that the rate exacted by defendant on most shipments moving prior to July 25, 1907, was \$1.25 per ton. Payment of this charge was made shortly after the various shipments moved. It appears that whenever bills were rendered for \$3 per ton payment was not made until November 14, 1907, and on that date these bills, together with the balance of the \$3 rate on bills first rendered at \$1.25, were paid.

It is evident that to sanction as a just basis for reparation the private understanding prior to the shipments the rate remaining unchanged until the shipments were made, would be to establish a precedent for the grossest discrimination and favoritism. Apparently, with the purpose of anticipating any objection of this sort to an award

of reparation it was testified that there was no other manufacturer or producer of ice in California that could have entered into a contract such as the one made by complainant, because no other company was in possession of cars and other facilities for the transportation of ice as needed by defendant. We do not think that this condition, if conceded to exist, meets the objection to, or would justify the Commission in the establishment of such a precedent. Conceding the arrangement to have been made in good faith, and that it was the purpose of the carrier to duly establish the lesser rate open to the public prior to any movement of the freight, and that this was not done because of an oversight, it is clear that both parties were guilty of gross laches in proceeding for so long a period in the handling of so large an amount of traffic without any change in the rate. Even had the rate been reduced pursuant to the understanding, the complainant would have had an overreaching advantage of any competitor, if there had been one, in having exclusive knowledge when the contract was made, that the rate was to be reduced.

If transactions of this kind are to be justified in particular instances upon the theory and contention that no direct harm has resulted to anyone because of a monopoly of the business by the person or concern who has made the contract, and therefore because of the absence of competition, then the Commission would in many cases be led into an interminable and unsatisfactory field of inquiry to determine whether or not any particular interest had been prejudiced by such arrangements. The reprehensible practice of filing so-called "midnight" tariffs under the former law, when rates could be reduced on three days' notice, could never have afforded a more ample opportunity for favoritism and discrimination, equivalent in all respects to direct rebates, than would be afforded by such transactions as are shown as the basis for the claim of reparation made in this case. It is not for the Commission, in a search for justification of an award consented to by the carrier, to inquire in respect to every such transaction as to whether or not actual preference or prejudice has resulted in harm to any particular person. It would be a vain attempt in many cases for the Commission to undertake to ascertain with reasonable certainty just what has resulted and who has been injured by transactions of this kind. The lawmakers, assuming that such practices would naturally result in many instances in favoritism and irreparable wrong, have enacted the law which adjudges the practice itself to be wrong, and forbids it. We do not feel justified, therefore, in awarding the reparation asked for, and it is denied.

No sufficient showing was made at the hearing or otherwise appears to enable us to determine whether the \$1.90 rate now in effect is just and reasonable. Therefore, upon that point no finding can properly be made upon this record. The complaint will be dismissed.

No. 2780.
BARRETT MANUFACTURING COMPANY
v.
CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted November 23, 1909. Decided January 4, 1910.

Complainant's demand for reparation for lightering its own merchandise across New York Harbor denied because (1) there was no tariff rule then in effect authorizing allowances to shippers for lightering their own shipments, and (2) the mere fact that the defendant could not lighter the shipments as promptly as the special exigencies of the complainant's business required gave the complainant no right, in the absence of tariff authority, to do the service for itself and then demand compensation for it. Complaint dismissed.

Niles & Johnson for complainant.
Jackson E. Reynolds for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainant in this proceeding is a corporation engaged in the manufacture and sale of roofing material and in the refining and sale of coal tar and its by-products. It has plants at Shadyside, in the state of New Jersey, and along the Gowanus Canal in Brooklyn, in the state of New York. The terminals of the defendant carrier are located at Jersey City, and all shipments made over its lines from across New York Harbor must be lightered to its docks at that point. This service is performed by the defendant without cost to shippers, and is in fact included under its through rates as published in tariffs on file with the Commission.

Reparation is demanded by the complainant on account of the lightering service from its several plants to the terminals of the defendant, performed by the complainant with its own boats on shipments of roofing material, pitch, and asphalt made by it over the lines of the defendant between August 15, 1905, and March 17, 1906. The amount prayed for in the petition is \$195.76, being at the rate of 3 cents per 100 pounds on 20 carload shipments of an aggregate weight of 652,550

pounds. The controversy first came before the Commission on informal correspondence on November 7, 1907, the formal complaint not having been filed until August 18, 1909. It follows under our previous decisions that all shipments moving more than two years prior to November 7, 1907, are barred under the provisions of section 16 of the act. This leaves for consideration but six of the complainant's shipments, aggregating 216,650 pounds in weight, on which reparation at the rate of 3 cents per 100 pounds would amount to the sum of \$65.

The contention of the complainant rests upon the proposition that inasmuch as the lighterage service was included by the defendant under its published through rates and was, in fact, furnished by the defendant to various other shippers, but was actually performed by the complainant on its shipments with its own barges, the refusal of the defendant to allow the complainant, out of its through rates, the actual cost to it of rendering the service results (1) in a discrimination against the complainant, and (2) in unjust and unreasonable charges upon the shipments made by it.

For some time prior to January 1, 1906, the lighterage service from various points in New York Harbor to the terminals of the defendant in Jersey City was performed for it, under contract, by one S. L. Seville, whose fleet consisted of about 35 boats and barges. It is admitted by the defendant that this fleet was inadequate promptly to handle all the traffic tendered to it, and also that the petitioner made requests at various times for lighterage facilities and complained of the service of the defendant as insufficient. The defendant, under its published tariffs, tendered such a service to its shippers and rendered the service as promptly as its facilities would permit. It endeavored to and apparently did comply with all demands upon it without discrimination and in the order in which requests for lighterage were filed with it by its shippers. But we infer from the record that on account of the special requirements and exigencies of its business the complainant felt it necessary to fill all the orders of its customers on the day on which they were received; and as the delays by the defendant, often of three or four days, in furnishing barges and boats for lightering the complainant's shipments to Jersey City were not infrequent, the petitioner, in order to facilitate the movement of its shipments, took the matter into its own hands and performed for itself the service of moving its merchandise across the harbor.

During the period covered by the complaint the petitioner employed three lighters of its own, one of 150 tons capacity and the other two of 90 tons capacity each. On December 22, 1905, the defendant issued a circular to its agents stating that "Effective January 1, 1906, this company has provided to give its patrons ample lighterage facilities."

On that date it took over the fleet of boats and barges of the Manhattan Lighterage & Transportation Company, consisting of some 60 vessels all told. Since that time no complaint appears to have been made either of the sufficiency or promptness of the defendant's service in moving the shipments of its patrons across the harbor to its Jersey City terminals. The complainant asserts that it received no copy of the circular referred to and did not learn of the increased facilities of the defendant until the latter part of August, 1906, since which time it has availed itself of the lighterage service furnished by the defendant. As a matter of fact between January 1 and August 1, 1906, the complainant made no requests on the defendant for lighterage service and none was furnished; so that the only shipments on which on any theory it could demand reparation are the four carloads that moved between November 7, 1905, and January 1, 1906.

In support of its contention the complainant shows by an affidavit filed of record that the cost to it of the lighterage service which it performed with its own boats was at least 3 cents per 100 pounds, and was probably more, because of the fact that it was obliged to both load and unload its own lighters. It is asserted that the only object the complainant had in doing its own lightering was to facilitate the movement of its own shipments and that, as a matter of fact, the service was performed at a loss. It may be well here to add that the defendant concedes that the cost to the Manhattan Lighterage & Transportation Company for lightering shipments across New York Harbor is 3 cents per 100 pounds.

It is to be observed that at the time when the shipments in question were made there was no provision in the tariffs of the defendant authorizing the payment by it of allowances on account of any lighterage performed by its shippers. On March 1, 1908, however, the defendant in a reissue of its lighterage and terminal regulations published a rule providing that:

When, for the convenience of the Central Railroad Company of New Jersey, delivery of eastbound traffic is made to outside lighters at Jersey City or Elizabethport, N. J., an allowance (out of through rate) of 3 cents per 100 pounds, or 60 cents per ton, net or gross, as the case may be, may be made for such service for delivering in New York Harbor within free lighterage limits.

A similar provision became effective on westbound traffic on August 1, 1908, but it remained in effect only until September 1, when it was canceled. It is not contended that these tariff provisions were applicable at the time the complainant's shipments moved and reference is made to them here only in order that the rate history in this connection may be fully before us.

After a careful examination of all the facts we are left under the impression that the complaint is not well founded. Although the petitioner could have required the defendant to lighter its merchandise

from its plants to the defendant's terminals at Jersey City, and the defendant was willing to do the work as promptly as its facilities permitted, the complainant, for its own convenience and to meet the special requirements of its business, performed the service for itself in its own lighters, and now demands compensation. Under all the circumstances shown of record and confining the ruling to the facts immediately before us we think the complaint has no merit. It must therefore be dismissed and it will be so ordered.

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No. 2874.

LEE D. JONES

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY.

Submitted September 29, 1909. Decided December 7, 1909.

For shipments of hay from Amsterdam and Merwin, Mo., to Memphis, Tenn., bills of lading were made out by the railroad agent, who on his own motion inserted a routing notation through Howe, Okla. The cars moved by that route and the complaint charges a misrouting, alleging a lower rate through Kansas City. It appearing from the Commission's own examination of the tariffs that a lower rate applied by the actual route of the movements, reparation is awarded for the overcharge.

Lee D. Jones for complainant in person.

S. W. Moore and *F. H. Wood* for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

D. A. Bumgarner, of Paola, Kans., a buyer and dealer in hay, shipped during December, 1907 and January, 1908, from Amsterdam and Merwin, in the state of Missouri, to Memphis, in the state of Tennessee, 12 carloads of hay consigned to his own order. Amsterdam and Merwin are local stations on the line of the defendant, the Kansas City Southern Railway Company, 62 miles and 58 miles, respectively, south of Kansas City. To reach Memphis shipments may move over the defendant's line either northward to Kansas City and thence by the Frisco to Memphis, or southward to Howe, in the state of Oklahoma, and thence over the Rock Island lines to Memphis. The shipments in question moved over the latter route, and the charges collected were on the basis of a through class rate of 33 cents per 100 pounds. The complainant's contention is that the cars ought to have been forwarded by the first-mentioned route over which there was no through rate, the local rates into and out of Kansas City yielding a through charge of 21½ cents per 100 pounds. Reparation is prayed for in the sum of \$301.18.

As the facts are stipulated, it appears that the bills of lading for the shipments in question were made out by the railroad agents at

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Amsterdam and Merwin, and that, without any directions being given by the consignor, the agents inserted instructions to route the cars through Howe and over the Rock Island. It is stated that these notations were not called to the attention of the shipper or his representative, but that the bills of lading were accepted by the consignor. The position taken by the defendant is that as the bills of lading were accepted the contracts of transportation, binding upon the shipper as well as upon the railroad, required that the cars should be forwarded by way of Howe; and that therefore the shipper has no claim against the railroad company based on the lower rates applying over the Kansas City route.

The question presented by the pleadings therefore is whether routing instructions inserted in a bill of lading by the railroad agent without any directions by the consignor are binding as against the shipper, and whether the initial carrier is thereby relieved from the obligation to forward the shipment over another route cheaper than that mentioned in the bill of lading. But it is not necessary to decide that question in this case. For the route by which the shipments actually moved, and which was specified in the shipping papers, was as a matter of fact the cheapest available route, and there is a rate overcharge on the shipments which ought to be refunded. An examination of the tariffs on file with the Commission not only verifies the 33-cent class rate, but also reveals a special commodity rate of 20 cents per 100 pounds on hay, from Amsterdam and Merwin to Memphis, applying under the express terms of the tariff through Howe and over the Rock Island. This commodity rate, which, of course, supersedes the class rate of 30 cents charged on the shipments, was published by the Kansas City Southern in a tariff filed with the Commission in 1903 and not canceled until October, 1909, although apparently it remained in effect through some inadvertence, the carrier being under the impression that it had withdrawn the rate.

In a tariff published and filed with the Commission by the Missouri Pacific Railway Company in 1896 a rate of 16 cents per 100 pounds from Amsterdam and Merwin, which, as before stated, are reached only by the Kansas City Southern, to Memphis was established. This tariff named as parties the Kansas City, Pittsburg & Gulf Railroad Company and the Kansas City, Memphis & Birmingham Railway Company, the predecessors, respectively, of the present Kansas City Southern and the present Memphis-Kansas City line of the Frisco. The latter company had a general concurrence on file with the Commission. The Kansas City, Pittsburg & Gulf "adopted" the tariff and filed it with the Commission under its own serial number. The tariff was canceled by the Missouri Pacific in the latter part of 1896; but neither the Kansas City, Pittsburg & Gulf,

nor its successor, the Kansas City Southern, formally canceled its issue of the tariff until October, 1909, when the continuance of the rates named therein was called to its attention by the Commission. We are of the opinion, however, that the 16-cent rate through Kansas City was not a lawful rate when the shipments in question moved.

There is an overcharge on the shipments in question, amounting to \$338.21, for the difference between the 33-cent and 20-cent rates as applied to the carloads in question. As the complainant, who is a commission merchant, was neither the consignor nor the consignee of the shipments in question, and apparently did not pay the freight charges, and as his demand for reparation is supported only by an assignment purporting to have been executed by Bumgarner, the consignor and consignee of record, the order that will be entered herein will require the defendant to refund the sum of \$338.21, with interest, to the complainant or such other party as may lawfully be entitled to receive the same. In this refund the Rock Island, which is not a party to the record, and against which an order therefore can not be entered, ought to participate on the basis of the agreed divisions.

17 I. C. C. Rep.

Nos. 2325, 2331, and 2332.

A. MERLE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted September 15, 1909. Decided January 4, 1910.

Rates on brass furniture trimmings and furniture knobs from Grand Haven, Mich., Waterbury, Conn., and Rome, N. Y., to San Francisco, Cal., ordered reduced, and reparation awarded.

J. O. Bracken for complainant.

Robert Dunlap, T. J. Norton, J. L. Coleman, and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

E. G. Buckland for New York, New Haven & Hartford Railroad Company and Central New England Railway Company.

O. E. Butterfield and Clyde Bronson for New York Central & Hudson River Railroad Company and Michigan Central Railroad Company.

H. Murray Andrews for Erie Railroad Company and Chicago & Erie Railroad Company.

Edward L. Upton for Goodrich Transit Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

From the pleadings and stipulations upon which the above-entitled complaints are submitted the following facts appear: Upon less-than-carload shipments of articles described as metal furniture knobs or trimmings from Grand Haven, in the state of Michigan, Waterbury, in the state of Connecticut, and Rome, in the state of New York, to San Francisco the complainant was required to pay charges at the first class rate of \$3 per 100 pounds, and in a few instances at the second class rate of \$2.60 per 100 pounds. From those points of origin and from other originating stations in the east the defendants had in effect a commodity rate of \$2 per 100 pounds applying on "brass shells and canopies for gas and electric light fixtures, boxed." The articles comprising the complainant's shipments are admitted by

the defendants to be made of the same materials as brass shells and canopies for lighting fixtures, and practically the only difference between the two kinds of articles is said to be the use to which they are put. By a new tariff that became effective December 6, 1909, the defendants have extended the less-than-carload commodity rate of \$2 per 100 pounds so that it now covers "brass curtain-pole trimmings and brass furniture trimmings, n. o. s."

Upon the record we find that brass furniture trimmings and furniture knobs ought not to take a higher rate between the points in question than the current rate on brass shells and canopies for lighting fixtures, and that a reasonable rate at the time of the movements referred to in these complaints was, and for the future will be, \$2 per 100 pounds. We further find that the complainant is entitled to reparation on the following shipments and in the amounts stated below:

In complaint No. 2325 upon 43 less-than-carload shipments originating at Waterbury, on dates ranging from March 15, 1907, to September 5, 1908, the aggregate weight of which was 19,590 pounds, charges were collected to the amount of \$574.50. At the rate of \$2 per 100 pounds, the charges on the same shipments would have been \$391.80. One of the shipments moved over the New York, New Haven & Hartford, New York Central, Michigan Central, and Santa Fe Railroad companies, and the other 42 shipments moved via the New York, New Haven & Hartford in connection with the Erie Railroad Company, Chicago & Erie Railroad Company, and Santa Fe. Upon all the shipments reparation is due the complainant in the sum of \$182.70, with interest.

Complaint No. 2331 involves a refund of \$144.68, to which the complainant is entitled with interest, upon 14 less-than-carload shipments made during the period between August 29, 1907, and September 14, 1908, from Rome to San Francisco; the aggregate weight was 14,780 pounds, and the total charges were \$440.28. These shipments moved via the New York Central in connection with the Michigan Central and Santa Fe.

The petition in No. 2332 alleges that during the period from July 30, 1907, to October 21, 1908, there was shipped to the complainant over the Goodrich Transit Company, in connection with the Santa Fe from Grand Haven to San Francisco, 15 less-than-carload consignments, of a total weight of 7,545 pounds. The charges actually collected amounted to \$223.38, while at the rate we fix as reasonable, \$2 per 100 pounds, \$150.90 ought to have been charged. The complainant should have reparation for the difference between the two rates, or \$72.48, with interest.

An order will be entered accordi

C. R.

No. 1473.
HITCHMAN COAL & COKE COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Decided January 10, 1910.

Complainant's petition for rehearing denied.

William A. Glasgow, Jr., and George R. E. Gilchrist for complainant.

REPORT OF THE COMMISSION ON PETITION FOR REHEARING.

CLARK, *Commissioner*:

A petition for rehearing which is specifically limited to a petition for reargument on the record already made is filed in this case. The only questions raised in this petition which were not fully considered and passed upon by the Commission in its disposition of the case (16 I. C. C. Rep., 512) are as follows:

1. Petition for rehearing alleges that there is a differential of 10 cents per ton against petitioner's mine and in favor of other mines in the Moundsville district on coal going east to Washington, Pa.

This contention was not raised in the hearing or argument of the case. The general understanding had and as admitted was that the rates from the Moundsville district to the east were the same as from the Fairmont district, and that the rates were the same from all mines in the Moundsville district. Complainant's brief contains the following:

The Hitchman mine is located in a district which is grouped, for rate purposes, by the Baltimore & Ohio Railroad Company, and is called the Moundsville district, the limits of which are Moundsville on the south, Elm Grove on the east, and Wheeling on the north. The rates from all the mines located in this district to markets are the same.

If complainant's mine is not accorded equal rates with other mines from the Moundsville district, and complainant desires to test the legality of that adjustment, it should be done in a proceeding which presents that issue. This case was presented and considered solely on the question of alleged discrimination against
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the Moundsville district and in favor of districts on the other side of the Ohio River. There is no evidence on the subject of discrimination between mines in the Moundsville district. If through error or oversight there is a discriminatory rate against complainant's mine as compared with any other mine in the Moundsville district, that error or oversight should be immediately corrected.

2. Our original report suggested that if defendants insisted upon maintaining lower rates upon coal for railway fuel than upon coal shipped for other purposes, it might be expected that those lower rates would be taken as a measure of the reasonableness of their commercial rates. The petition for rehearing asks that the existence and maintenance of such preferential rates on railway fuel coal be now taken by the Commission as evidence of unreasonableness of higher rates enforced against petitioner and other shippers on coal not shipped for railway fuel purposes.

Proceedings have already been instituted against certain lines to test the lawfulness of special rates on railway fuel coal and to test as promptly as can be done in a civil proceeding the right of a carrier to maintain such rates. Under those proceedings a full hearing will be had and the Commission is not disposed to reopen this case for the purpose of considering that question, which can be considered more fully and more promptly in the proceeding already instituted.

3. The original complaint alleged that rates from the Moundsville district were unjust and unreasonable *per se*, but no testimony was offered in support of that allegation. All of the evidence was directed to the question of alleged discrimination against the Moundsville district and in favor of the eastern Ohio district, and in argument it was conceded that the only question involved was that of the propriety of grouping the Moundsville district for rate-making purposes with the districts on the west side of the Ohio River instead of with the districts on the east side of that river. The petition is for reargument upon the facts already of record. There is nothing in the record which would justify a finding as to the reasonableness of the rates in and of themselves, and therefore that question could not be decided upon this record.

The petition for rehearing is denied.

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No. 1618.

A. MERLE COMPANY

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COM-
PANY ET AL.

Nos. 2421, 2422, and 2423.

SAME

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted October 23, 1909. Decided January 4, 1910.

Rates of \$1.35 per 100 pounds in carloads and \$1.85 per 100 pounds in less than carloads on brass-covered iron tubing from New York City and neighboring points to San Francisco, Cal., found unreasonable, and \$1.25 in carloads and \$1.75 in less than carloads prescribed as maximum rates. Reparation awarded.

Lester G. Burnett and J. O. Bracken for complainant.

O. E. Butterfield and Clyde Brown for New York Central & Hudson River Railroad Company and Michigan Central Railroad Company.

Robert Dunlap, T. J. Norton, James L. Coleman, and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

N. S. Brown for Wabash Railroad Company.

P. J. Flynn for Delaware, Lackawanna & Western Railroad Company.

A. G. Briggs and G. W. Markham for Chicago Great Western Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The facts developed in the first of the above-entitled cases may be briefly stated as follows:

At its factory in San Francisco the complainant manufactures iron and brass bedsteads, for which it obtains its materials princi-

pally in the east. On April 23, 1908, a carload of tubing, weighing 41,440 pounds, was shipped to the complainant from Rome, in the state of New York, and in the bill of lading made out by the consignor was described as "brass tubing." The charges paid at destination amounted to \$563.76, and were assessed at a carload commodity rate of \$1.35 per 100 pounds applying on "brass goods, not silver plated, * * * pipe, tubes and flues (copper or brass)." In the record the shipment is referred to by the defendants as consisting of "iron-lined brass tubing" and their position is that the correct rate was applied and the charges were reasonable. It is stated that in the past that rate has been charged on all shipments of this kind to the Pacific coast from eastern manufacturing points. The complainant, on the other hand, refers to the article shipped as "brass-sheathed iron tubing cut in shape for bed ends," and contends that a rate of \$1 per 100 pounds ought to have been applied under a tariff item naming that rate on carloads of "iron and steel, articles of, * * * tubing cut and bent in shape for bed ends." But the complainant says that if the shipment was not, strictly speaking, iron tubing, and therefore not entitled under the tariffs to the benefit of the \$1 rate, on the other hand, it was not brass tubing and hence no tariff rate was expressly applicable; and the complainant urges that a reasonable rate for the transportation would have been \$1 per 100 pounds.

The testimony shows that about seven-eighths of the thickness of this tubing was iron and the outside one-eighth was brass; that the weight was approximately 2 pounds per linear foot and the value 11 cents, the tubing being 2 inches in diameter. The weight of solid brass tubing of that size is about nine-tenths of a pound per foot and its value is a little less than 23 cents. Plain iron tubing cut for bed ends is worth about 7 cents and weighs a little less than 2½ pounds per linear foot; and ordinary iron pipe weighs between 3½ and 4 pounds and is quoted at 10 or 11 cents per foot. On the latter article there is a commodity rate from the Atlantic seaboard to the Pacific of 65 cents per 100 pounds, in carloads.

It is manifest that the shipment in question did not consist of brass tubing, although it was apparently used in the manufacture of bedsteads known to the trade and sold to the public as brass bedsteads. On the other hand, it clearly was not iron tubing. We therefore think that neither the iron nor the brass tubing rate was applicable. The class rate or combination of rates that legally applied under the tariffs was, however, clearly an excessive rate. Being of only one-half the value of brass tubing, which is used in great quantities in the arts and manufactures, this brass-plated iron tubing ought to have a less rate than is applied on brass tubing. On the other hand,

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being of a greater value than ordinary iron pipe or tubing, or such tubing shaped and cut for bed ends, it ought, under ordinary conditions, to take a higher rate than such iron tubing.

The defendants say that their rates on iron tubing to Pacific coast terminals are forced down by water competition. Articles of brass, however, can not ordinarily be transported by ocean routes because of the damage resulting from corrosion by the salt water and air, and the rates on brass tubing, therefore, are said not to be controlled by the competition of ocean lines. But the complainant asserts that its consignments of brass-covered iron tubing, being in a rough and unfinished state, can be sent by water and that if the rail rates are not adjusted to a more reasonable basis it will in the future make all its shipments over ocean routes.

Since the submission of this case the defendants have, by an amendment to their tariffs, extended the application of their rate on brass tubing to cover shipments of brass-covered iron tubing. Our conclusion, however, is that that is not a reasonable classification or rate on the latter article. Upon all the information now before us we think that a carload rate of \$1.25 per 100 pounds would have been a reasonable rate to apply on the shipment in question, and that will be a reasonable rate as a maximum for the future. Upon less-than-carload shipments of brass-covered iron tubing we fix a rate of \$1.75 per 100 pounds as a maximum, the rate on brass tubing being \$1.85 and on iron tubing shaped for bed ends \$1.25. We further find that the complainant is entitled to reparation on the shipment in question in the sum of \$45 76, with interest. Of this amount \$4.32 represents an overcharge in weight east of Chicago.

The remaining three of the above-entitled cases as submitted must be controlled by the decision on the record in the complaint first above entitled. The same rates are involved, and it is therefore necessary only to state the facts and our conclusions as follows:

In No. 2421 reparation is prayed for on seventeen less-than-carload shipments of brass-covered iron tubing that moved during the period from March 23, 1907, to March 25, 1908, from New York City, or Weehawken, over the lines of the defendants, the Delaware & Hudson, Wabash, and Santa Fe railroad companies. The aggregate weight of the shipments was 28,745 pounds, and charges were collected at the less-than-carload rate of \$1.85 per 100 pounds, aggregating \$531.08. On the basis of the lower rate that we now fix as reasonable, \$1.75 per 100 pounds, the charges amount to \$503.04. The complainant is therefore entitled to reparation in the sum of \$28.04, with interest.

Three carloads of the commodity described above, aggregating in weight 135,460 pounds, and on which charges amounting to \$1,785.30 were collected, shipped in July and December, 1907, and July, 1908,

from Rome, N. Y., to San Francisco, are involved in complaint No. 2422, and also 6 less-than-carload consignments of an aggregate weight of 21,130 pounds, on which charges amounting to \$390.91 were collected. On the basis of the carload rate of \$1.25 and the less-than-carload rate of \$1.75 the charges on all the shipments would aggregate \$2,063.04. The order to be entered therefore will require a refund to the complainant of \$113.17, with interest.

The complainant received from Croton, on the Hudson, three less-than-carload shipments of "iron-lined brass tubing" billed from the point of origin on March 27 and September 17, 1907, aggregating in weight 12,290 pounds and upon which \$227.36 was exacted for the transportation. At the less-than-carload rate of \$1.75, which we fix as reasonable, the charges would aggregate \$215.08. In complaint No. 2423 the complainant therefore will be awarded \$12.28, with interest, as reparation for the excessive charges collected on those shipments.

An order will be entered in accordance with these findings.

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Nos. 1702 and 1756.

CEDAR HILL COAL & COKE COMPANY ET AL.

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 9, 1909. Decided January 10, 1910.

1. Through routes from the coal mines in the Walsenburg district, Colorado, to points on the Atchison, Topeka & Santa Fe system and controlled lines, to the east and south of Colorado, established.
2. Maximum joint rates fixed from said district to points in Kansas, Texas, and New Mexico.
3. Request for differential between rates on lump coal and slack denied on the showing in these cases.
4. Reconsignment rules now in effect on defendant carriers' lines considered satisfactory for the traffic of complainants.

C. W. Durbin for complainants.

E. E. Whitted for Colorado & Southern Railway Company and Fort Worth & Denver City Railway Company.

E. N. Clark for Denver & Rio Grande Railroad Company.

J. J. Coleman, D. L. Meyers, George A. H. Fraser, Robert Dunlap, and T. J. Norton for Atchison, Topeka & Santa Fe Railway Company; Eastern Railway Company of New Mexico; Southern Kansas Railway Company of Texas; Pecos & Northern Texas Railway Company; and Pecos River Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainants in these two cases and the nature of the relief sought being the same, they were heard together, and will be disposed of in one report.

Complainants are engaged in the operation of coal mines in southern Colorado in what is known as the Walsenburg district, located along the lines of the Colorado & Southern Railway and the Denver & Rio Grande Railroad. This district is about 44 miles south of Pueblo, and extends north and south about 15 miles.

In the first of these cases the petition is for the establishment of through routes and joint rates from complainants' mines, located on the Colorado & Southern Railway, via the Fort Worth & Denver

City Railway, to points in the Panhandle of Texas and eastern New Mexico along the lines of the Southern Kansas Railway of Texas, Pecos & Northern Texas Railway, Eastern Railway Company of New Mexico, and the Pecos River Railroad, which lines are hereinafter referred to as the Pecos lines, and which belong to the Atchison, Topeka & Santa Fe Railway Company, hereinafter referred to as the Santa Fe. There are no through routes and joint rates on this traffic at the present time, and the originating carriers refuse to sign a bill of lading to destinations on the Pecos lines. Dealers located on the Pecos lines in Texas can only get this coal by maintaining an agent at Amarillo, Tex., to receive the coal, pay the freight at that point, and rebill the coal on at Texas commission rates. Considerable coal moves under this arrangement. Dealers on the Pecos lines in New Mexico, however, are cut off entirely from Walsenburg coal, because the Texas commission rates do not apply in New Mexico, and the interstate distance tariffs applicable thereto are purposely made so high that they are prohibitive. As was said by the representative of the Santa Fe lines, "The figures are prohibitory. They are meant to be so."

In the second of these cases, complainants seek through routes and joint rates via Pueblo to points on the line of the Santa Fe in Kansas, and via Trinidad to points on the line of the Santa Fe and certain points on the Eastern Railway of New Mexico, in New Mexico and Texas. The only way this traffic can move at the present time is by billing locally to Trinidad and rebilling at the local rate from Trinidad to point of destination.

In both cases petition is made for the establishing of certain reconfirmation rules governing the movement of this traffic.

Formerly there were in effect through routes and joint rates on coal from the Walsenburg district over the lines of defendants in case 1702, but on August 2, 1905, after the Pecos lines were acquired by the Santa Fe, this arrangement was canceled and the Santa Fe now refuses to reestablish through routes and joint rates, though the defendant carriers not controlled by the Santa Fe are willing to do so. The reason given by the Santa Fe for its refusal is that there are mines located along its own lines in Colorado in the Trinidad and Cañon City districts and in the Gallup (N. Mex.) district, from which it is able to adequately supply the markets in question and at the same time secure to itself a long haul, thereby greatly enhancing its revenues. Prior to the cancellation of these rates there was a good market for complainants' coal along the Pecos lines. The cancellation of the joint rates materially reduced this market in Texas and totally destroyed it in New Mexico.

While at the common law a common carrier may not have been compelled to accord traffic coming off the rails of other carriers and

not originating on its own lines the necessary facilities for through movement, under the act to regulate commerce, as amended June 29, 1906, this is no longer the law with regard to interstate carriers. We have on previous occasions referred to the well-recognized obligations resting upon carriers surrounding the transportation of property tendered, and it will not be necessary to again go into that matter here. *Freight Bureau of Little Rock v. M. V. R. R. Co.*, 13 I. C. C. Rep., 243; *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C. Rep., 460; *Chamber of Commerce v. C., R. I. & P. Ry. Co.*, 15 I. C. C. Rep., 460; *Standard Lime & Stone Co. v. C. V. R. R. Co.*, 15 I. C. C. Rep., 620.

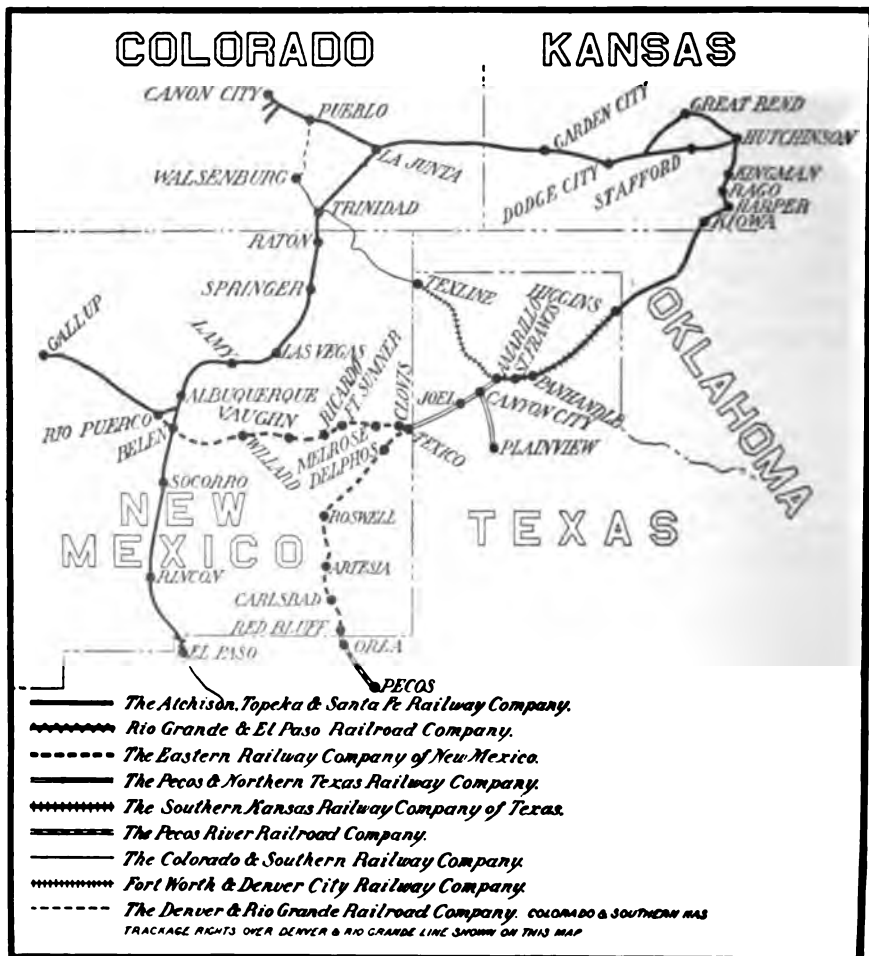
The only limitation placed upon the exercise of the power of the Commission to establish a through route is where there is already a reasonable or satisfactory through route in existence, and the question as to whether or not an existing through route is "reasonable or satisfactory" is one of fact for the determination of the Commission.

The defendants admit that there are no joint through rates on coal from complainants' mines to points on the Santa Fe. Neither do we understand that any serious claim is made that the present arrangement by which through billing is denied and rebilling is required at junction points constitutes a "reasonable or satisfactory" through route. We refer to the view taken by us on a former occasion. *Enterprise Transportation Co. v. Penn. R. R. Co.*, 12 I. C. C. Rep., 326.

In the opinion of the Commission the record in these cases shows that no reasonable or satisfactory through routes exist for this traffic except to certain points reached by other carriers where there are joint rates in effect; leaving out these points, an order will be issued requiring the establishment of through routes from the complainants' mines to points on the lines of the defendant carriers as petitioned for in each of these complaints. That is, joint through routes from complainants' mines in the Walsenburg district, to points in Texas and New Mexico, on the Southern Kansas Railway, Eastern Railway of New Mexico, Pecos & Northern Texas Railway, and Pecos River Railroad, via the Colorado & Southern to Texline, Tex., and the Fort Worth & Denver City Railway to Amarillo, Tex.; joint through routes from complainants' mines to points on the Santa Fe and the Eastern Railway Company of New Mexico in New Mexico and Texas, via Trinidad, Colo.; joint through routes from complainants' mines to points on the line of the Santa Fe in Kansas, via Pueblo, Colo. There will be excepted certain points which already have through routes and joint rates over the lines of other carriers, and no points in Oklahoma will be included, as the record is not conclusive as to whether those points should be reached via the Amarillo gateway or via Pueblo.

In case No. 1702 the complainant asks generally for through routes and joint rates from the mines in the Walsenburg district. It appears

from tariffs on file that the mining points named in the separate tariffs of the Colorado & Southern and the Denver & Rio Grande are not identical in all respects. As the Denver & Rio Grande is not made a party to case No. 1702, we are unable to order through routes and joint rates from stations on that line only. If, however, complainants are not afforded proper facilities in handling this traffic



by reason of this omission of the Denver & Rio Grande, a supplemental complaint may be filed including that railroad as a defendant. In case No. 1756 the Denver & Rio Grande is included, and the order in this case will include points at which complainants' mines are located, named in the tariffs of both the Colorado & Southern and the Denver & Rio Grande.

The map accompanying the report shows in outline the routes from the various Colorado coal fields and the Gallup, N. Mex., field to the markets sought by complainants. The proximity of Walsenburg to these markets is apparent and also its direct connection over the Colorado & Southern and Fort Worth & Denver City with Amarillo, from whence coal can be readily distributed throughout the Pecos country. The routes via Pueblo to points east and via Trinidad to points south on the main line of the Santa Fe are also shown. From Cañon City into the Pecos country the Santa Fe hauls Cañon City coals east to Hutchinson and then south and west to point of destination, making a circuitous route and thereby reducing the per-ton-per-mile earnings.

The complainants include in their petition figures showing what they conceive to be the proper joint rates on this traffic. The following table gives the absolute rate and the per-ton-per-mile rate from Walsenburg and from Cañon City to representative points throughout the markets covered by the petition. There are also shown the rates asked for in the petition.

Rate on coal per ton of 2,000 pounds.

To—	1	2	3	4	5	6	7	8	9
	From Walsenburg district via Amarillo.	Distance.	Rate per ton per mile.	From Cañon City district.	Distance.	Rate per ton per mile.	Rates asked from Walsenburg.	Distance.	Rates asked per ton per mile.
Panhandle, Tex.....	\$6.60	358	\$0.0184	\$3.60	737	\$0.0049	\$3.10	358	\$0.0086
Plainview, Tex.....	6.80	370	.0183	3.80	839	.0045	3.40	370	.0092
Roswell, N. Mex.....	11.60	497	.0233	4.35	976	.0045	3.50	497	.0070
Artesia, N. Mex.....	11.60	549	.0211	4.60	1,018	.0045	3.75	549	.0069
Pecos, Tex.....	9.80	671	.0146	5.05	1,140	.0044	4.20	671	.0063
Garden City, Kans.....				{ 2.75 e 2.25 }	597	{ .0046 e .0038 }	2.50	613	.0040
Emporia, Kans.....				3.50	533	.0065	3.25	549	.0069
Kansas City, Mo.....				3.75	646	.0058	3.50	642	.0064
Guthrie, Okla.....				3.25	627	.0061			

e Nut.

In considering the above table it should be remembered that the very high rates shown from Walsenburg based on interstate distance tariff (column 1) accomplish what they are confessedly intended to do; that is, they prohibit the movement of traffic under them. Traffic from Walsenburg mines actually moves into the Texas territory via Amarillo, from which point it takes the Texas commission rates, and the total charge by this arrangement to any point on these lines in Texas is exactly the same as that shown in column 4 from Cañon City, plus the rebilling charge paid at Amarillo to shipper's agent. As already stated, however, this movement is not possible to points in New Mexico,

because Texas commission rates do not apply, and the rates which do apply are admitted to be prohibitive. It is not often that a violation of the requirement of the first section, that charges for interstate transportation shall be reasonable, is so freely admitted by a carrier subject to the act, and our only comment is to repeat the language of Congress contained in the act, that "every unjust and unreasonable charge for such service or any part thereof is hereby prohibited and declared to be unlawful." Walsenburg coals are therefore excluded from New Mexico.

In reaching the rates they propose (column 7) complainants have used as a basis for the rates to points on the Pecos lines south of Amarillo the present rates to these points from the Gallup mines; and for rates to points on the Southern Kansas Railway north of Amarillo the present rates from the southern Kansas mines to these points. It is argued that the Walsenburg mines are nearer to these markets than either the Gallup district or the southern Kansas district and that therefore the same rates when applied to the shorter haul would be more than reasonable. The rates asked for by complainants are lower than the rates obtaining on coal from the Cañon City district, on the ground that traffic from Cañon City moves by way of Hutchinson, Kans., over a route twice as long as the haul from the Walsenburg district via Amarillo. In short, the chief basis of the claim for these particular rates is distance. If distance were the only consideration in making this adjustment, the matter would be comparatively simple, but in order to properly conserve the interests of all parties concerned, or who may be affected by our disposition of these cases, there are other factors pressing for attention.

While classes and quality of coal are not to be taken primarily as a standard in fixing rates thereon, still they should be referred to in some degree in order to guard against prescribing such an arrangement of rates as would unnecessarily drive out of the market the coals of other districts, thereby cutting off competition or rendering a shortage more liable. The Walsenburg product is a good grade of bituminous coal about on a par with the Rockvale coal from the Cañon City district. Trinidad coal is not as good as Walsenburg or Cañon City coal for domestic use, it being employed largely for steam fuel. Gallup coal is lignite and can not compete with the Colorado coals mentioned. An arrangement, therefore, which would place Walsenburg and Cañon City coals in these markets on a fair competitive basis at reasonable rates would seem to take into consideration the interests of shippers, consumers, and carriers.

The demand of complainants for lower rates on Walsenburg coals than are now given Cañon City coals on the basis of the considerably shorter haul on the former does not give due weight to all the facts

to be considered. Manifestly, if one carrier voluntarily gives a very low rate per ton per mile over a long and circuitous route in order to handle the traffic entirely over its own lines, this can not be taken as a standard of reasonableness of rates on other traffic which passes over two or more separately owned lines of railroad. Moreover, the record shows that the initial carriers in the Walsenburg district encounter great difficulties in handling this traffic out of the mines. Neither do we attach much importance to a comparison of conditions surrounding the transportation of Gallup coal with that of other fields. The defendants show that this rate is influenced by the great movement of empty cars eastward from California, besides other important considerations, such as down grade from points of production to points of consumption.

After careful consideration of all the facts, circumstances, and conditions bearing upon the questions involved, we conclude that joint rates should be accorded by defendants on coal from the Walsenburg district to points on the Santa Fe lines in Kansas, and those points in Texas east of but not including Joel, which should not exceed those shown in schedules on file of rates between Cañon City, Colo., and those points, and referred to by tariff number in the order. To points in Texas and New Mexico west of and including Joel, Tex., but not including points in New Mexico on the line running north of Belen, we find that the rates should not exceed the rates to these points from Trinidad, Colo., shown in tariff schedules specifically referred to in the order, plus a differential of 30 cents per ton of 2,000 pounds; while to points north of Belen the rates should not exceed the rates to said points from Trinidad, Colo., shown in tariff schedules specifically referred to in the order, plus a differential of 25 cents per ton of 2,000 pounds. These differentials are the same as those maintained generally by the defendants in corresponding territory where they have rates from both Cañon City and Trinidad as is shown in the following table:

	Trinidad rate.	Cañon City.	Differ- ential.		Trinidad rate.	Rate fixed for Walsen- burg.	Differ- ential.
Amarillo, Tex.....	\$3.30	\$3.55	\$0.25	Albuquerque N. Mex....	\$2.90	\$3.15	\$0.25
Cañon City, Tex.....	3.30	3.55	.25	Raton, N. Mex.....	.60	.85	.25
Plainview, Tex.....	3.55	3.80	.25				
Roswell, N. Mex.....	4.05	4.35	.30	Texico, N. Mex.....	3.30	3.60	.30
Artesia, N. Mex.....	4.30	4.60	.30	Socorro, N. Mex.....	3.15	3.45	.30
Oris, Tex.....	4.60	4.90	.30	Rincon, N. Mex.....	3.15	3.45	.30
Pecos, Tex.....	4.75	5.05	.30	El Paso, Tex.....	3.15	3.45	.30

A few points east and west of Texico are given differentials by the carriers in excess of 30 cents, but points as far south as Roswell are
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accorded the 30-cent differential by the carriers, and we find that it should in no case exceed that amount in rates from Walsenburg.

Complainants' witnesses concede that if Walsenburg were accorded the same rates as Cañon City this adjustment would enable the Walsenburg operators to compete in the common markets on a relatively fair basis when coupled with through routes. Walsenburg and Cañon City coals now take the same rates to certain Kansas and Nebraska points, which arrangement seems to be regarded as just and fair to both coal-producing districts. The record shows that under the present arrangement of reshipping Walsenburg coal at Amarillo, wherein the freight charge amounts to the same as the rates to the same points on Cañon City coal, there is a considerable movement of Walsenburg coal, notwithstanding the refusal of the carriers to bill this coal to points on the Pecos lines and the additional expense of maintaining a forwarding agent at Amarillo thereby made necessary.

The per-ton-per-mile earnings on this traffic from Walsenburg into the Pecos country over the routes and under the rates prescribed will be much greater than is obtained under the same rates from Cañon City over the circuitous route by the Santa Fe via Hutchinson, as is shown by the following:

From Cañon City to Plainview, 839 miles, \$0.0045 per ton per mile.

From Walsenburg to Plainview, 370 miles, \$0.0103 per ton per mile.

No order will be issued at this time as to the proper division of these joint rates between the carriers making up the through routes, in the belief that the carriers can themselves settle this matter. This feature must have been duly considered when the joint rates which were in effect prior to their cancellation in 1905 were agreed upon, and doubtless the proportions then fixed would furnish a guide to a proper adjustment at this time.

Complainants have asked in their petition for a differential of 50 cents under the lump rate on slack and nut coal. The reason for this request is, as they say, to enable them to compete with this same arrangement from southern Kansas. The slack from both Walsenburg and Cañon City coals is of very inferior value, and little, if any, of it is shipped outside of Colorado. Any inequality which may exist between rates on these coals will be corrected by the order in this case. It appears that what influenced the complainants in seeking this differential is the fact that a differential is allowed on slack from the southern Kansas field, which rate is made to apply as well to nut coal. The record shows, however, that nut coal in southern Kansas is passed through a much smaller screen than the nut of the Colorado districts, and it is wholly impracticable for us to attempt to fix a differential in this case based upon any such dissimilar practices as prevail in these fields.

The conditions surrounding the slack rates from Trinidad mines are also wholly dissimilar from those in the Cañon City and Walsenburg districts. Trinidad coal is primarily a steam fuel, and the slack competes with other steam coals, such as that from southern Kansas, and the rates thereon are predicated on conditions which can not be compared with those surrounding complainants' product. The record in these cases does not set forth sufficient data upon which the Commission is warranted in awarding a differential on slack from the Walsenburg mines, but if the present arrangement is such as to prohibit the movement of slack unjustly the matter may be presented to the Commission in a supplemental complaint.

Complainants have asked for the establishment of a rule permitting the reconsignment of coal to a new destination. In answer to this defendants say that there are now in effect reasonable reconsignment rules which will be applicable to this traffic. An examination of the tariffs on file with the Commission substantiates the claim of the carriers, and it is not considered advisable to interfere with the present uniform arrangement of this matter further than to say that the present rules should be made applicable to the through routes and joint rates established by the Commission in these cases. It may be added that reconsignment is a privilege—not a right to be demanded by shippers—and can only be required where necessary to correct unjust discrimination.

An order will be issued in accordance with the above conclusions.

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Nos. 2645, 2646, and 2647.

E. LAUER & SON

v.

NEVADA-CALIFORNIA-OREGON RAILWAY.

Submitted November 23, 1909. Decided February 7, 1910.

Rate on potatoes and onions in packages, carloads, from Reno, Nev., to Alturas, Cal., found to be unreasonable. Reparation awarded.

William P. Seeds for complainant.

Dodge & Barry for defendant.

REPORT OF THE COMMISSION.

KNAPP, *Chairman*:

These cases were heard together and will be disposed of in this report. On December 8, 1908, and March 6, 1909, respectively, complainant shipped over defendant's line from Reno, Nev., to Alturas, Cal., a carload of potatoes in sacks, and on May 10, 1909, a mixed carload of potatoes and onions in packages from and to the same points. The aggregate weight of the shipments was 74,000 pounds, and defendant exacted a rate of 80 cents per 100 pounds or a total charge of \$592.

It is alleged in the complaints that this charge was unreasonable because there was in effect at the time a lower combination of local rates, and because defendant charged only \$6 per ton on the same commodities between the same points in the opposite direction. Reparation is asked.

Defendant operates a narrow-gauge railroad extending in a north-westerly direction from Reno to Alturas, a distance of 184 miles. The tariffs of this road show that during the period from December 18, 1908, to March 30, 1909, there was in effect a rate of \$10 per ton on vegetables in packages, including potatoes in carloads, from Reno to Likely, Cal., and a rate of \$2 per ton from Likely to Alturas. Likely is a point about 20 miles south of Alturas. This combination made \$12 per ton. Only one of the shipments in question moved

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while the lower combination was in effect. The present rates are 71 cents per 100 pounds to Likely and 80 cents to Alturas.

It is stated in behalf of defendant that the \$10 rate to Likely was made to meet certain local conditions, and that the rate of \$6 from Alturas to Reno was made to enable vegetable growers in that region to move their product as well as to encourage settlement.

The rate of 80 cents per 100 pounds for the distance from Reno to Alturas yields 8.7 cents per ton per mile. Taking into consideration the character of the traffic and distance of the haul, the marked difference between the rates over the same line in the opposite direction, and the fact that for some time defendant maintained a combination of local rates of \$12 per ton from Reno to Alturas, we find that the rate charged was unreasonable to the extent at least that it exceeded \$12 per ton, and that complainant is entitled to reparation in the sum of \$148, with interest, which sum represents the difference between the amount collected and the amount that would have been collected if a \$12 rate had been applied.

In view of the allegations of the complaint and the evidence introduced at the hearing we do not feel warranted on this record in prescribing a lower rate on the traffic involved between the points named. This conclusion, however, will not imply approval of the \$12 rate nor preclude further investigation as to its reasonableness upon proper complaint.

The defendant will be required to cease and desist from charging its present rate of 80 cents per 100 pounds for the transportation of potatoes and onions in packages, in carloads, from Reno to Alturas, and in lieu thereof to maintain for a period of two years rates not to exceed \$12 per ton, subject to such further order, if any, as may be made in the meantime.

An order will be entered accordingly.

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Nos. 2650 and 2651.
BUNCH & TUSSEY

v.

NEVADA-CALIFORNIA-OREGON RAILWAY.

Submitted November 23, 1909. Decided February 7, 1910.

Rate on potatoes and onions in packages, carloads, from Reno, Nev., to Alturas, Cal., found to be unreasonable. Reparation awarded.

William P. Seeds for complainant.

Dodge & Barry for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The above cases were heard together and will be disposed of in one report. On January 4, 1909, complainant shipped over the lines of defendant from Reno, Nev., to Alturas, Cal., a carload of potatoes weighing 24,000 pounds, and on March 10, 1909, a mixed carload of potatoes and onions in packages weighing 24,000 pounds. The aggregate weight of these shipments was 48,000 pounds, and a total sum of \$384 was collected, at the rate of 80 cents per 100 pounds. It is alleged in the complaints that this charge was unreasonable because there was in effect at the time a lower combination of local rates, and because defendant charged only \$6 per ton on the same traffic between the same points in the opposite direction. Reparation is asked.

These cases in all essential respects are similar to those decided by the Commission in *E. Lauer & Son v. Nevada-California-Oregon Ry.*, 17 I. C. C. Rep. 488. For the reasons therein stated we find that the rate exacted on these shipments was unreasonable and unjust to the extent at least that it exceeded \$12 per ton, and that complainant is entitled to reparation in the sum of \$96, with interest.

An order will be entered accordingly.

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No. 2666.
WEST TEXAS FUEL COMPANY
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

No. 2667.
LORETZ & KEPLEY
v.
SAME.

No. 2709.
CONSUMER'S ICE COMPANY ET AL.
v.
SAME.

Submitted December 6, 1909. Decided February 8, 1910.

1. Following the decisions in *Rice, Robinson & Witherop v. W. N. Y. & P. R. R. Co.*, 6 I. C. C. Rep., 455, and in *Dallas Freight Bureau v. G., C. & S. F. Ry. Co.*, 12 I. C. C. Rep., 223, the Commission declines to now award reparation under a decision formerly rendered in a case in which such reparation was not prayed for. Complaint in case No. 2666 dismissed.
2. Cases Nos. 2667 and 2709 are controlled by decision in *West Texas Fuel Company v. T. & P. Ry. Co.*, 15 I. C. C. Rep., 443. Same charge found to be unreasonable from same date, and reparation awarded on shipments moved subsequent to that date.

Rufus B. Daniel for complainants.

T. J. Norton and *J. J. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

Hawkins & Franklin for El Paso & Southwestern Railroad Company.

E. L. Sargent for Texas & Pacific Railway Company.

17 I. C. C. Rep.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The above cases were heard together, and although different questions are presented in each they will be disposed of in one report. Each case involves the reasonableness of the switching charge of \$5 per car exacted by the Texas & Pacific Railway for switching service rendered by it in the city of El Paso, Tex.

Case No. 2666 is a claim for reparation on a number of carloads of coal switched from the tracks of the Atchison, Topeka & Santa Fe in El Paso to the warehouse of complainant located on the tracks of the Texas & Pacific in El Paso. These cars were switched during the period from June 17, 1907, to April 10, 1909. Complainants and defendants are the same as in *West Texas Fuel Co. v. T. & P. Ry. Co.*, 15 I. C. C. Rep., 443, wherein the Commission found the switching charge exacted on interstate traffic to be unreasonable and ordered the maintenance on and after April 15, 1909, of a charge not in excess of \$3 per car for switching from the tracks of the Atchison, Topeka & Santa Fe to the warehouse of complainant. In that proceeding the reasonableness of the switching charge was attacked, but no reparation was referred to except on one single carload, consideration of which was barred by the statute of limitation. Having thus secured reduction in the charge, complainant now comes in this subsequent and separate proceeding with a prayer for reparation on shipments which were switched within two years prior to date of reduction in the charge. No evidence was presented in the former case as to the propriety of awarding reparation on past shipments. In the report of the Commission it was said:

The only testimony offered with relation to reparation on past shipments is that of one witness, who stated that he thought complainant was entitled to it. Such a statement is too vague, uncertain, and indefinite to fix any liability for reparation upon defendant.

That case, which must be the foundation of the claim now presented if it has any foundation, was tried and decided upon the question of the reasonableness of the switching charge at that time and for the future. The charge was not found to have been unreasonable in the past. The record in the former case is stipulated into the instant case. There is testimony showing that at some time in the past the charge complained of had been lower, and one witness for complainant testifies that conditions at time the charge was reduced were not different from those obtaining prior thereto. But even if the unreasonableness of the charge in the past were now shown for the purpose of supporting this prayer for reparation the Commission would not, under the circumstances, award reparation.

Rice, Robinson & Witherop v. W. N. Y. & P. R. R. Co., 6 I. C. C. Rep., 455; *Dallas Freight Bureau v. G., C. & S. F. Ry. Co.*, 12 I. C. C. Rep., 223.

The complaint in case No. 2666 will be dismissed.

In case No. 2709 the question presented is precisely the same as that determined by the Commission in *West Texas Fuel Co. v. T. & P. Ry. Co.*, *supra*, except that the industries are located a short distance from the plant of the West Texas Fuel Company and that some of the cars were switched from the tracks of the El Paso & Southwestern Railroad. The plants of both complainants in this case are located upon the tracks of the Texas & Pacific, and they allege that defendant Texas & Pacific charged and collected \$5 per car for switching carloads of coal from the tracks of the Atchison, Topeka & Santa Fe and the El Paso & Southwestern to the industries in question between July 13, 1907, and April 5, 1909. This charge is alleged to have been unreasonable, and reparation is asked for on the basis of a charge of \$3 per car. The evidence shows that the switching in these cases was done under substantially the same circumstances and conditions as those considered in the original *West Texas Fuel Co. case, supra*.

The Texas & Pacific presents no reasonable or satisfactory explanation why it did not reduce its switching charge to these industries at the same time that it reduced that charge for the same service rendered to the West Texas Fuel Company. Tariffs on file show that the switching charges in El Paso by all other lines are now \$3 per car on interstate business. This case is controlled by the finding in the case of *West Texas Fuel Co. v. T. & P. Ry. Co.*, *supra*, and for the reasons therein given we find that the Texas & Pacific Company's charge of \$5 per car for switching interstate shipments from the tracks of the Atchison, Topeka & Santa Fe or of the El Paso & Southwestern in El Paso to the industries of complainants on the tracks of the Texas & Pacific in El Paso is, and since April 15, 1909, has been, unreasonable to the extent that it exceeds or exceeded \$3 per car. We also find that for the future that charge should not exceed \$3 per car, and that complainants are entitled to reparation, with interest, from the Texas & Pacific Railway Company for all such charges paid in excess of \$3 per car on shipments that have been so switched on or subsequent to April 15, 1909. Complainants may present to said defendant itemized statements of the shipments, if any, upon which reparation is due hereunder and upon verification of same by said defendant and presentation to the Commission orders for reparation will be entered. It appears that in some instances complainants purchased coal from other works in El Paso after same had been delivered to such other owners, and that such purchases were switched to complainants' warehouses. Such trans-

actions were local and intrastate, and no such instance should be included in claim for reparation hereunder.

In case No. 2667 a different question is presented. In this case complainant loaded cars at its warehouse on the Texas & Pacific tracks in El Paso with less-than-carload shipments of butter, eggs, poultry, and packing-house products. Upon complainant's request the cars were set at its warehouse by the Texas & Pacific and when so loaded were switched by the Texas & Pacific to the depot or tracks of the El Paso & Southwestern, and were by it transported to various interstate points on its line. When a car was so placed at complainant's warehouse the El Paso & Southwestern sent a checker there to check in the shipments, and when the car was loaded bills of lading covering the different shipments were issued by the El Paso & Southwestern. The Texas & Pacific performed the switching service from the warehouse to the depot or tracks of the El Paso & Southwestern and charged complainant \$5 per car for that service.

The placing of the car at the warehouse was for the convenience of complainant. The shipments were less-than-carload lots and but for the switching by the Texas & Pacific complainant would have been compelled to haul the commodities to the El Paso & Southwestern depot, possibly at greater expense than the \$5 charge for switching. Bills of lading were issued by the El Paso & Southwestern for the movement from El Paso to various interstate points and its charges were its local rates from El Paso.

The record shows that complainant loaded cars in this manner with substantial regularity. Mr. Loretz testified "We run that car every Thursday to Douglass and Bisbee." It was well known to all concerned that the car was sent to the complainant's warehouse for the purpose of being loaded with interstate shipments and that it was switched from the warehouse to the El Paso & Southwestern tracks for the purpose of being forwarded to interstate points.

The Texas & Pacific called attention at the hearing to the fact that the rulings of the Texas commission authorize a charge of \$5 per car for switching from one industry to another in the same city for the convenience of owners of the property. The tariffs put in evidence by that defendant as authority for the \$5 switching charge on the shipments in question, however, are by their terms distinctly applicable to interstate traffic.

Obviously these shipments were interstate in their character and the switching done upon them by the Texas & Pacific was a part of the interstate movement. This complainant's warehouse is situated in close proximity to that of the West Texas Fuel Company and that of the Consumer's Ice Company. The service rendered is not substantially dissimilar from that rendered in switching interstate shipments between those warehouses and El Paso & Southwestern tracks,

and no justification appears for a higher charge on these shipments. In fact, the Texas & Pacific has for some time assessed a switching charge of \$5 per car on all switching of interstate traffic in El Paso, and when that charge was condemned in the *West Texas Fuel Company case, supra*, to the extent that it exceeded \$3 per car, this defendant complied literally with the Commission's order and reduced its switching charge on interstate traffic only upon shipments of the West Texas Fuel Company. The suggestion made by this defendant that its switching charges on these merchandise shipments should be higher than on shipments of coal because of the greater value of the property switched is not at all in harmony with the universal practice in assessing switching charges or with this defendant's own practices at El Paso. This defendant suggests that to reduce this switching charge would create discrimination against small shippers who are obliged to dray their shipments. That question is not here, and if this practice of switching less-than-carload shipments creates or results in unjust discrimination the obligation is upon the defendant to remove that discrimination.

For the reasons stated in the *West Texas Fuel Company case, supra*, and herein, we find that the switching charge of the Texas & Pacific of \$5 per car from the warehouse of complainant on the tracks of the Texas & Pacific in El Paso to the depot or tracks of the El Paso & Southwestern Railroad in El Paso is, and since April 15, 1909, has been, unreasonable to the extent that it exceeds or exceeded \$3 per car. We also find that for the future that charge should not exceed \$3 per car and that complainant is entitled to reparation, with interest, from the Texas & Pacific for all such charges in excess of \$3 per car on shipments, if any, that have been so switched on or subsequent to April 15, 1909. Complainant may present to defendant Texas & Pacific Railway Company itemized statement of the shipments upon which reparation is due hereunder, and upon verification of same by said defendant and presentation to the Commission, order for reparation will be entered.

Orders in conformity with these views will be entered, and cases Nos. 2667 and 2709 will be held open for the entry of such further orders as may be necessary in the matter of reparation.

No. 1275.

NEW ORLEANS BOARD OF TRADE ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 9, 1909. Decided February 8, 1910.

Rules providing for demurrage and storage charges at New Orleans upon shipments of forest products shipped on local bills of lading "for export" after ten days of free time, the same as upon other commodities shipped under like conditions, found to be neither unlawful nor unreasonable, nor unjustly discriminatory as compared with rules which do not provide for demurrage or storage charges upon shipments that are moved under through export bills of lading. Complaint dismissed.

George H. Terriberry for complainants.

Sidney F. Andrews for Illinois Central Railroad Company and New Orleans & Northeastern Railroad Company.

J. P. Blair for Morgan's Louisiana & Texas Railroad & Steamship Company.

Hunter C. Leake for Yazoo & Mississippi Valley Railroad Company.

Stann D. Baxter for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The issue here is whether or not defendants unjustly discriminate against shippers of forest products from interior points to New Orleans on local bills of lading for export, to the undue preference of shippers of such products on through export bills of lading, by charging the latter no demurrage or storage at New Orleans, while such charges are made against the former after ten days.

It is stated in the complaint that the rules and customs governing export rates at Boston, New York, Baltimore, Philadelphia, and Norfolk allow shippers on local bills of lading thirty days' free storage, exclusive of day of arrival, and the Commission is asked to put exporters of forest products shipped on local bills of lading, so far as storage is concerned, on an equality with exporters shipping on through export bills of lading, and to place New Orleans on an equal basis with eastern seaboard ports.

In fact this question has actually resolved itself into whether or not the time now allowed exporters on local bills of lading is sufficient. The testimony shows that complainants consider that five days within which to furnish disposition of cars, i. e., to name vessel and ship line, and fifteen days thereafter free, in the cars or on the wharves at the option of the carriers, would be reasonable. Complainants abandoned the claim of unjust discrimination as not of importance, fearing that if that were found its removal might result in imposing the same charges against shipments on through export bills of lading. However, this feature has an important bearing upon the determination of whether five or fifteen days' free time after giving disposition shall be allowed.

Complainants allege that the one traffic is as remunerative to the carrier as the other, and it is shown that, generally speaking, the rates paid are the same, the local rates to New Orleans plus the current ocean rate to the foreign destination. The handling charge for shipments on through export bills and on local bills for export is the same, 1 cent per 100 pounds, and the only difference in the cost to the shipper is car service and storage. The testimony shows that shipments on local bills of lading for export are moved from the inbound train yard to another yard, where they are held for disposition orders. Consignee is notified, and when disposition is furnished the cars are switched and delivered. Shipments on domestic bills of lading are moved directly from inbound train yards to destinations. Shipments on through export bills of lading are moved directly from the inbound train yards to the railroad docks. The cost for switching shipments on local bills of lading for export is about double that on shipments on domestic or through export bills of lading.

On lumber shipped to New Orleans locally demurrage is charged after forty-eight hours of free time. If shipped on local bills marked "for export," demurrage or storage is charged after ten days' free time. If shipped on through export bills no demurrage or storage is charged.

These rules are open alike to all and, as has been stated, the rates are the same, but complainants, for the maintenance of their business, desire to ship on local bills for export. Previous to the hearing some roads did not issue through export bills of lading, and some roads do not now issue them at nonagency stations. But so far as the principal defendant, the Illinois Central Railroad, is concerned, a receipt from the train conductor may be exchanged at New Orleans for a regular through export bill of lading.

For brevity, those who ship on through export bills will hereinafter be referred to as through shippers; those who ship on local bills marked "for export" as export shippers, and those who ship on ordinary local bills as domestic shippers.

Export shippers buy their lumber "against sales in Europe"—that is, they sell it abroad before they buy it in the interior. In some instances steamship space is not engaged until after the lumber arrives at New Orleans. Sometimes the shipper secures what is known as "distress room"—that is, where a vessel desires to sail and has not a full cargo it reduces rates on a sufficient quantity of freight to make up the deficiency. One difficulty met by export shippers under defendants' rules is that it is impossible to accurately anticipate the arrival of cars at New Orleans or the steamship arrivals and sailings.

There are reasons why the export shipper does not wish to use a through export bill. Forest products on a through export bill may be inspected at New Orleans, but may not be rejected. On local bill "for export" shipment may be both inspected and rejected. On a through export bill the mill is informed of the destination and ultimate purchaser in Europe, and such purchaser learns the name of the seller and the point of origin. Buyers in Europe frequently require a steamship bill of lading before draft is paid, and, except as has been noted, at nonagency stations there is no one to sign a through bill. In times of congestion shipments on local bills move more quickly than those on through export bills. The latter traffic is under the control of the carriers, as they engage the steamship space for it, and in the event of congestion at New Orleans cars on through export bills are stopped before reaching that point, while traffic on local bills is forwarded, because the carriers do not know what steamship booking has been made and do not care to take the risk of stopping the shipments.

Having no yard facilities of their own, the export shippers at New Orleans depend upon the railroad terminals and the public wharves for storage of lumber.

No charge for storage is made on the public wharves, but many of the steamers go only to private or railroad terminals, and there is no protection against the elements on the public wharves.

Prior to March, 1907, export shippers were allowed twenty days' free time, but on that date it was reduced to ten days, the same as on all other commodities, because, as contended by defendants, that length of time was considered reasonable, the congestion at New Orleans was great, and the use of the cars was being abused. At that time the Illinois Central was holding between 5,000 and 5,500 cars of freight at New Orleans and was unable to furnish equipment. It employs a man for the purpose of calling upon export shippers to prevail upon them to release cars.

It is testified that the terminal facilities of the Illinois Central and Yazoo & Mississippi Valley railroads in New Orleans compare favorably with any in the country, but that the volume of business trans-

acted through them is too great to permit of the highest efficiency and lowest cost. Although property adjoining the Illinois Central docks has been purchased with the intention of extending the facilities for handling forest products, the port commission has not granted permission to proceed. The public wharves being inadequate, freight must be held in cars or on terminals or wharves of the railroads.

The Illinois Central has spent approximately \$3,000,000 at its Stuyvesant dock, which is 150 feet wide and nearly a mile long. The working capacity of its yards and terminals is 5,000 cars a day.

At Algiers and Gretna, on the west side of the river, the Morgan's Louisiana & Texas Railroad & Steamship Company has trackage facilities for 3,000 cars, and freight locally consigned for export is held in cars at those places awaiting consignee's instructions. This road has no facilities at New Orleans and can not acquire any. An increase of free time to twenty days would not relieve its cars. The forest products must necessarily be protected from the weather and under cover. If there is not space enough under the covered shed at Gretna tarpaulins are used.

One witness shipped four cars on through export bills in 1907. The first was at New Orleans 28 days; the second 8 days; the third 25 days, and the fourth 28 days, an average of $22\frac{1}{4}$ days. Another witness testified that he shipped 68 cars on through export bills in the six or seven months preceding the hearing in May, 1909, 29 of which were not delivered to the steamer within ten days. These statements were intended to indicate that notwithstanding the fact that the railroad had possession and control of the cars, in the instances mentioned they could not make delivery within the limit of free time.

Three witnesses presented statements of car service and storage paid during the year ended March 31, 1908, which show that during that year they shipped 1,825 cars of forest products through New Orleans, on 549, or 30 per cent of which, \$2,917.70 demurrage and storage was paid.

This percentage appears large, but it only represents the charges against three shippers. Defendants submitted a comparative statement of export cars handled at New Orleans from March to August, 1906, inclusive, under twenty days' free time, and same period of 1907, under ten days' free time, from which it appears that in the period named in 1906 the east-side roads handled 5,337 cars on local bills for export. The average detention on cars was 10.31 days and on wharves 2.63 days, or a total average detention of 12.94 days. During the corresponding period in 1907 they handled 5,017 cars on local bills for export, and the average detention was 10.96 days, divided 7.88 days on cars and 3.08 days on wharves.

In the same period of 1906 they handled 1,069 cars on through export bills with an average detention of 7.44 days in cars and 8.36 days on wharves, a total of 15.80 days. In the 1907 period 1,733 such cars show average detention of 7.16 days on cars and 7.07 days on wharves, a total of 14.23 days.

In the same period the west-side roads handled on local bills for export 1,802 cars for 1906 with average detention of 12.78 days on cars and 5.99 days on wharves, a total of 18.77 days; and for 1907, 1,600 cars with average detention of 10.66 days on cars and 5.27 days on wharves, a total of 15.93 days.

During the same periods the west-side roads handled on through export bills 394 cars for 1906, with average detention of 5.99 days on cars and 5.89 days on wharves, a total of 11.88 days, and for 1907, 233 cars, with average detention of 6.96 days on cars and 8.40 days on wharves, a total of 15.36 days.

The ten-day rule went into effect in March, 1907. During that month 1,095 cars were detained, and the average detention was 12.09 days, which would seem to indicate that the shippers had not yet accommodated themselves to the reduced time, but the number of cars held and the average detention decreased until in August but 670 cars were detained, and the average detention was 9.12 days. The greatest number of cars held was in August, 1906, and the lowest number was in August, 1907.

On the west-side roads the average detention both in 1906 and 1907 was greater than on the east side roads, but there also the average detention was reduced.

Complainants emphasize the fact that the average detention on east-side lines in 1907 on local shipments for export was 10.96 days on 5,017 cars, while on through export shipments it was 14.23 days on 1,733 cars, which it is contended indicates the insufficiency of ten days' free time. In other words, it is argued that if the defendants, having control of the cars on through export shipments, detained them an average of 14.23 days, it is unreasonable to expect the export shipper to comply with the ten-day provision. The detention in the cars as compared to the time on the wharves was in all instances greater on local export lumber, but on through export bills the average in 1906 was 7.44 on the cars and 8.36 on the wharves, and in 1907 was 7.16 on the cars and 7.07 on the wharves, from which it would appear that the defendants released their cars more quickly than did the export shippers, but used the wharves more. On the through export bill the carrier is under contract for a through movement. If there is actionable delay the carrier's liability is necessarily to the through shipper. If, therefore, the carrier delays the through export shipment in order to prevent congestion at its terminals, and,

to permit free movement of other freight holds through export freight in cars because it can not be stored on the wharves, or stores it on the wharves awaiting loading into a vessel, the through shipper may be heard to complain of the delay, but the export shipper, who, if he desires, can ship on through export bill, can not in fairness use those delays as a measure of the sufficiency of the free time allowed to him.

Free time of from thirty to sixty or more days is allowed at Boston, Philadelphia, and Baltimore. At New York ten days are allowed. At Mobile, Ala., ten days' free time is allowed, provided carrier's agent is notified within forty-eight hours after arrival of shipment that it is for export. At Norfolk and Portsmouth, Va., ninety-six hours' free time is allowed, provided carrier's agent is notified within forty-eight hours after arrival of shipment that it is for export.

It is testified that, generally speaking, more free time is allowed on export shipments at New Orleans than at any other port south of Norfolk.

The rules at New Orleans for car service and storage provide that the charge for demurrage is \$1 per day and for storage is 1 cent per 100 pounds for the first ten days or fraction thereof after the free time, and for each additional ten days or fraction thereof three-quarters of 1 cent per 100 pounds, but it is provided that charge for storage shall not exceed the authorized charge for demurrage for the same time. In computing time Sundays and legal holidays are excluded.

The fact that all export freight is allowed free time at Boston, Philadelphia, and Baltimore in excess of that granted at New Orleans does not afford a basis for a finding that ten days' free time is not sufficient for forest products.

Some of complainants' witnesses seemed to think that demurrage or storage should be charged only in exceptional cases. Defendants contend that the rule is intended to release the equipment and relieve the terminals and wharves for the benefit of all shippers; that experience has shown that their facilities will not permit of longer time without congestion and inability to promptly furnish cars, and that they are entitled to compensation for the use of equipment, terminals, and wharves beyond the free period.

Three witnesses who testified that the time is too short had demurrage or storage assessed against their shipments of forest products in one year on 549 cars, 30 per cent of their shipments, in the sum of \$2,917.70, but when we take into consideration the facts that storage may not exceed demurrage on the same car, and that on 5,017 cars the detention in the six months of 1907 averaged less than one day over the free time, it is seen that the total demurrage and storage on east-side roads was less than \$5,000 for that period.

Practically nothing was said as to the domestic shipper, who is allowed but forty-eight hours' free time. He pays the same rate as does the export shipper or the through shipper. What differentiates his shipment from that of the export shipper is not necessary to here determine, but the fact of the shorter free time is referred to simply to suggest the intermediate position of the export shipper. The latter must accommodate his business to the uncertainty as to arrival of cars and to the limited capacities and irregularity of sailings of the ocean carriers, and those facts, which ought to be considered, appear to have been considered in giving him longer free time.

The present rule applies to all commodities and no circumstance or condition appears that would justify differentiating forest products from all other export traffic. No unjust discrimination has been shown, either as compared with through shippers or with other Gulf or Atlantic ports. The limited facilities at New Orleans should be used by defendants in such way as to afford the most efficient service possible for all shippers. The defendants have a right to reasonable compensation for the use of their cars, terminals, and wharves after the transportation service may reasonably be held to have ended. Complainants have the right to ship on through export bills, and it is conceded that five days is sufficient within which to give disposition of cars. We can not find that defendants' rules for assessing demurrage and storage charges at New Orleans against shipments of forest products moved upon local bills of lading "for export" are unlawful, unreasonable, or unjustly discriminatory.

The complaint must be dismissed.

17 I. C. C. Rep.

Nos. 2513 and 2514.

G. LIEBOLD, DOING BUSINESS UNDER THE NAME AND
STYLE OF G. LIEBOLD COMPANY,

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

No. 2526.

JOHNSTON-LOCKE MERCANTILE COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 2542.

THE LOUVRE

v.

SAME.

No. 2832.

GOLDBERG-BOWEN & COMPANY

v.

WABASH RAILROAD COMPANY ET AL.

Submitted February 11, 1910. Decided February 14, 1910.

Reparation denied to shippers of beer in carloads from Mississippi River and Atlantic coast points while an advance of 10 cents per 100 pounds in a long-established rate to San Francisco, Cal., was in effect.

J. O. Bracken for complainants.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard, P. F. Dunne, and C. W. Durbrow for Southern Pacific Company.

17 L. C. C. Rep.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

It is alleged in these complaints that the charge by defendants of \$1.10 per 100 pounds for the transportation of beer in carloads from points on and east of the Mississippi River to San Francisco, Cal., was unreasonable and unjust to the extent that it exceeded \$1. Reparation is asked in each of the proceedings. Although the shipments moved over different routes the questions involved are common to all the cases; they were heard together and will be disposed of in one report.

Prior to January 1, 1909, for a period of at least fourteen years, the rate on beer in carloads to San Francisco was \$1 per 100 pounds from points on the Mississippi River and points east thereof to the Atlantic seaboard. January 1, 1909, this rate was raised to \$1.10, and on June 5, 1909, the rate of \$1 was restored.

To sustain their demand for reparation complainants rely upon the fact that the \$1 rate had been maintained for a long period; that it was raised for about five months and then reduced; and that, as they allege, there were no changes in the transportation conditions affecting this commodity during the time the increased rate was in effect.

The tariffs show that when the old rate was restored on June 5, 1909, the minimum applicable was increased from 24,000 pounds, which had been maintained for many years, to 30,000 pounds. Under this higher minimum carload earnings are more at the \$1 rate than they were at the \$1.10 rate with the lower minimum.

The evidence shows that when the rate was increased dealers in beer at San Francisco protested and that a conference was held with representatives of defendants. It was finally agreed that the old rate should be restored, the shippers consenting that the minimum be raised to 30,000 pounds. It does not appear, however, that either of the complainants took part in these negotiations.

The rate on beer from Atlantic seaboard points to San Francisco by water is 75 cents per 100 pounds, and it was stated to defendants at the conference in question that if the rate was maintained at \$1.10 shipments would take the water route; and it appears that at least one shipment was made by water from New York to San Francisco.

The rate of \$1 per 100 pounds on beer is blanketed from the Atlantic coast to all points as far west as the Mississippi River, and must be regarded as low in comparison with rates on analogous traffic transported under similar conditions. Beer in carloads is usually in the three principal classifications of the country. The thirtieth fifth class rate is \$1.65 per 100 pounds.

Taking into consideration all the facts and circumstances, the character of the traffic, the fact that the rate extends from the Mississippi River to the Atlantic coast, and that it is lower than the fifth class rate applied to beer shipments generally throughout the country, we do not feel that a case has been made which warrants us in awarding reparation.

These cases are clearly distinguishable from that class of cases where a rate long in force is advanced, maintained at the higher figure for a short time, and then voluntarily reduced to the former basis, without satisfactory explanation of the advance. In this case the restoration of the old rate per 100 pounds was accompanied with an increase of the carload minimum which operates to give greater carload earnings than the \$1.10 rate applied to the former minimum. The basis of reparation must be a finding of fact that the rate actually charged was unreasonable, and we are not prepared to make such a finding upon the record in these cases.

The complaints will therefore be dismissed.

17 I. C. C. Rep.

No. 2652.
BUNCH & TUSSEY
v.
NEVADA-CALIFORNIA-OREGON RAILWAY.

Submitted November 23, 1909. Decided February 7, 1910.

Rate of \$1.70 per 100 pounds on less-than-carload shipments of apples from Reno, Nev., to Alturas, Cal., found to be unreasonable. Reparation awarded.

William P. Seeds for complainant.
Dodge & Barry for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

December 18, 1908, complainant shipped from Reno, Nev., to Alturas, Cal., 300 boxes of apples, weighing 12,000 pounds, upon which defendant exacted a rate of \$1.70 per 100 pounds, or a total of \$204. It is alleged in the complaint that this charge was unreasonable because defendant had in effect at the time a rate of \$7 per ton on apples in carloads and \$13 per ton on less-than-carload lots from Alturas to Reno. Reparation is asked.

Alturas is located at the northwesterly terminus of a narrow-gauge railroad operated by defendant, which extends from Reno a distance of 184 miles. The rate in question yields more than 18 cents per ton per mile and is much higher than is charged over narrow-gauge railroads in the same territory for a similar distance.

Taking into consideration the character of the traffic, the distance of the haul, the marked difference between the rates in the reverse direction, and the circumstances and conditions surrounding the traffic, we find that the rate charged was unreasonable to the extent at least that it exceeded \$1 per 100 pounds, and that complainant is entitled to reparation in the sum of \$84, with interest, which sum represents the difference between the amount actually collected and the amount that would have been collected had a \$1 rate been charged.

In view of the allegations of the complaint and the evidence introduced at the hearing we do not feel warranted on this record in prescribing a lower rate on the traffic involved between the points named. This conclusion, however, will not imply approval of the \$1 rate nor preclude further investigation as to its reasonableness upon proper complaint.

The defendant will be required to cease and desist from charging its present rate of \$1.70 per 100 pounds for the transportation of apples, less than carloads, from Reno to Alturas, and in lieu thereof to maintain for a period of two years a rate not to exceed \$1 per 100 pounds, subject to such further order, if any, as may be made in the meantime.

An order will be entered accordingly.

17 I. C. C. Rep.

No. 2859.

AMOS REHBERG & COMPANY

v.

ERIE RAILROAD COMPANY ET AL.

Submitted January 25, 1910. Decided February 8, 1910.

Case is controlled by Rule 215 of Conference Rulings Bulletin No. 4, and by decision in *Larowe Milling Co. v. C. & N. W. Ry. Co.*, ante 443. Reparation awarded.

G. M. Stephen for complainant.

H. M. Andrews for Erie Railroad Company and Chicago & Erie Railroad Company.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant alleges that on one less-than-carload shipment of clothing weighing 300 pounds, shipped from New York, N. Y., to Janesville, Wis., on January 23, 1906, defendants charged and collected \$3.31.

This charge is alleged to be unjust and unreasonable to the extent that it exceeded the charges under a rate of \$1.03 per 100 pounds, said rate of \$1.03 being made up of the first class rate of 75 cents per 100 pounds from New York to Waukesha, Wis., plus a proportional rate of 28 cents per 100 pounds from Waukesha to Janesville. Complainant prays for the establishment of a just and reasonable rate on clothing from New York to Janesville, and for reparation in the sum of 22 cents.

Complainant alleges that the matters complained of were submitted to the Commission informally and were brought to the attention of defendants by the Commission in May, 1907.

At the hearing complainant admitted that no complaint, formal or informal, had been filed against the Erie Railroad Company or the Chicago & Erie Railroad Company as to this shipment until the filing of the formal complaint September 24, 1909. Counsel for the Erie and the Chicago & Erie contends that, therefore, as to these defend-

ants the statute of limitation had run against the complaint before it was filed.

Defendant Chicago & North Western Railway contends that when informal complaint for reparation on this shipment was presented it was denied by that defendant and that complainant thereafter permitted the denial to stand without further effort or action on complainant's part for more than two years before filing the formal complaint, and that, therefore, complaint has no proper standing before the Commission.

It is shown that for more than two years past the Chicago & North Western has constructed rates for through shipments to and from Janesville and points similarly situated, upon the basis contended for by complainant, and which was provided for in the Commission's ruling of March 18, 1907, now Rule 215 of Conference Rulings Bulletin No. 4.

In the instant case complainant's informal presentation made no reference to any carrier east of Chicago or to a desire to include any defendant other than the Chicago & North Western. In a letter to the Commission dated April 30, 1908, complainant's attorney said:

The C. & N. W. is the only road that is concerned in the overcharge. They persist in charging an illegal combination of locals and the overcharge claimed is all in the treasury of the C. & N. W. Company and nowhere else.

And in another letter of June 10, 1908, he said:

I wish to call your attention particularly to the fact that there is no other road involved in this overcharge except the C. & N. W. Railway. * * * No other road at all was at fault.

The alleged excess charge was due to the fact that the North Western had charged its local rate from Chicago instead of its lower rate from Waukesha.

The charges complained of were made up by combination of the charges of the Erie to Chicago and the local charges of the North Western from Chicago to Janesville. The rate claimed would be made up by combination of the joint rate of the Erie and the North Western to Waukesha and a proportional rate of the North Western from Waukesha to Janesville. The shipment moved in January, 1906, and complainant made no effort to advise the Erie or the Commission of any complaint against the Erie until September, 1909. We are of the opinion that this complaint has no proper standing as against the Erie Railroad or the Chicago & Erie Railroad.

The general rule is well settled that when new parties defendant are brought in by amendment, the statute of limitations continues to run in their favor until thus made parties. The suit can not be considered as having been commenced against them until they are made parties. As was said by Justice McLean of the United States Supreme Court, it would be a novel and unjust principle to make defendants respon-

sible for a proceeding of which they had no notice. When an action is commenced as to any defendant there must be an existing cause of action against him and the right to a remedy upon it. 25 *Cyclopedia of Law and Procedure*, 1302.

On the question of the standing of this complaint as against the Chicago & North Western Railway we find that the records show that about May 1, 1907, complainant filed what was intended to be a formal complaint against the Chicago & North Western on account of this shipment. Complainant was advised by the Commission that the complaint was so faulty that it could not be entered as a formal complaint without correction, and it was suggested that the matter be taken up informally with the North Western, which suggestion was assented to and acted upon. Under date of March 12, 1908, complainant called attention to the fact that no reply had been received from the North Western, and it was then discovered that the original file of papers had been lost, presumably in transit. Under date of May 15, 1908, complainant furnished duplicate of original complaint, which was brought to the attention of the North Western. On May 27, 1908, the freight traffic manager of the North Western replied, stating that no through rate was in effect when the shipment moved; that it was delivered to the North Western at Chicago and that it applied its local rate from that point; that application of the Waukesha combination was not authorized until promulgation of the Commission's ruling of March 18, 1907, *supra*, and that the shipment had been charged for on a legal basis. Complainant was thereupon advised that informal effort had failed and that if he desired to pursue the matter further, formal complaint would be necessary. Complaint herein was filed September 24, 1909. It is therefore seen that complainant did not abandon the claim nor withhold efforts to secure adjustment of it to the extent understood by counsel for the North Western.

The statute of limitations has not run against this shipment in so far as the Chicago & North Western is concerned. The case is governed by the decision in *Larrowe Milling Co. v. C. & N. W. Ry.*, 17 I. C. C. Rep., 443. The Waukesha combination was the lawful rate. The North Western collected from complainant 22 cents more than the lawful charges and must refund that amount, with interest. A carrier that has collected an overcharge can not be excused from repayment of same because it has paid it to another carrier. An order for reparation will be entered against the Chicago & North Western.

As has been seen, the application of rates prayed for has been in effect for more than two years. The present adjustment is in accord with the Commission's ruling of March 18, 1907, *supra*, and with the findings in *Larrowe Milling Company case, supra*. There is therefore no occasion for an order as to future application of rates.

No. 2875.

LANDERS, FRARY & CLARK

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 17, 1910. Decided February 8, 1910.

Defendants' classification of complainant's coffeepot percolators at double first class found unjust and rates not exceeding those of first class merchandise in Western Classification prescribed.

William F. Upson for complainant.

J. E. Munroe for Union Pacific Railroad Company.

F. C. Dillard for Southern Pacific Company and Oregon Railroad & Navigation Company.

James C. Jeffery for Missouri Pacific Railway Company.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The coffee percolator is a contrivance for making coffee without bringing the coffee itself into contact with the boiling water. The coffee is placed in a receptacle with a strainer bottom through which a small tube extends from the bottom of a cistern underneath which contains the water. Heat is applied at the lower end of this tube, which converts the water into steam and forces it through the tube against the dome of the receptacle where it condenses and falls back upon the coffee, through which it percolates and so drips into the water underneath. It is claimed that when coffee is boiled certain properties injurious to health are extracted, which is avoided by this method of preparing.

As the percolator was originally constructed it seems to have consisted of the receptacle for the coffee, the cistern holding the water, and some means for the production of heat, either an alcohol or gas lamp or an electrical heater. Coffee percolators are extensively made in that form still, being variously denominated percolators, coffee percolators, coffee machines, and coffee urns. They are used for the

making a coffee on the dining table and are usually of ornamental design.

The percolators manufactured by the complainant are coffeepots with the percolator apparatus placed inside. This apparatus consists of the receptacle for the coffee, the glass dome, and the tube. It is made of aluminum with the exception of the glass top.

Any suitable material can be used for the pot, that actually encloses the percolator, the complainants being aluminum and enameled ware. It is reported that brass and copper were also used by the competitors of the complainant. When completed this percolator has the appearance of an ordinary coffeepot and is used upon the kitchen stove like the ordinary coffeepot.

The tin coffeepot sells at retail for from 25 to 50 cents; the enameled ware from 50 cents to \$1 and the aluminum according to size from \$2 to \$4. The percolator of the complainant varies somewhat in price and the size and character of the ware of which the pot itself is constructed. The retail price to the consumer is from \$3 to \$5; the wholesale price as shipped averages about \$1.75. The additional cost of applying the percolator apparatus itself would not probably exceed 50 cents.

In packing for shipment each percolator is placed in a corrugated paper box surrounded with excelsior. Six of these paper boxes are packed in a wooden box, which is the unit for shipment. The wooden box contains from 3 to 4 cubic feet, according to the size of the percolator, and weighs from 35 to 40 pounds. It was said that 24,000 pounds in weight of these boxes could be loaded into a standard car 36 feet in length. The weight is about the same as that of tinware when not nested.

The defendants all operate under Western Classification, by which this article is rated, L. C. L., as double first class. The complainant insists that it should be classified as first class, and this is the question before us.

The complainant urges that the percolator manufactured by it is essentially a coffeepot and should be classified as a coffeepot according to the ware from which it is manufactured. It is not an ornamental machine to be put upon the table like a coffee urn with an electric or alcohol attachment, but is intended for use in the kitchen exactly as the coffeepot is.

This claim of the complainant is fortified both by reason and analogy. Several other coffeepots have appliances upon the inside for heating the coffee in the process of making, which add to the weight of the coffeepot itself, yet in all these cases no distinction is made between this and the ordinary coffeepot. The article produced by the complainant is not used like the coffee machine upon the dining room table, but is for the kitchen, where it comes into

direct competition with the ordinary coffeepot. While the price of these percolators exceeds that of the coffeepots generally used, the cost of the percolating apparatus is small and the testimony shows that complainant is already experiencing competition which cuts down its price to the consumer. The aluminum percolator does not retail now for much in excess of the aluminum pot without the percolator attachment.

An examination of other classifications shows that in both Official and Southern territory these percolators are classified according to the ware of which they are made. In Official Classification aluminum ware and enameled ware, not nested, in crates or boxes, are classified as first class, L. C. L., and these percolators take that rate. In Southern Classification enameled ware and aluminum ware take second class, L. C. L., under which these coffee percolators of the complainant move.

Still, we are not prepared to say that the defendants may not properly classify this article by itself. It is a distinct thing, having a well-defined use, and it may, if in the opinion of the carriers that is desirable, properly be considered as an independent article for the purpose of fixing the transportation charge.

In Official Classification aluminum ware, enameled ware, nickel or nickel-plated ware, silver-plated ware, and tinware, are all rated first class, L. C. L., when packed for shipment as these percolators are. In Southern Classification enameled ware, aluminum ware, and tinware, when packed, are second class; Britannia ware and plated ware, other than gold or silver, are first class.

There is nothing about this article, in bulk, in value, or in liability to loss or damage which justifies the imposition of charges much, if any, above those usually applied to the articles above named.

The complainant points out that the great disparity of rates in Western Classification territory operates to the prejudice of this article. It costs 75 cents to transport 100 pounds of these percolators from New Britain, Conn., where they are manufactured, to Chicago, a distance of 1,100 miles; while the cost of carrying the same 100 pounds for 500 miles farther, to Omaha, is \$1.60. These percolators can be shipped from Cincinnati, for example, through Chicago, to St. Paul for materially less than they can be shipped from Chicago to St. Paul. All this prejudices the jobbers against this coffeepot and makes it difficult for the complainant to handle it in competition with other coffeepots.

Upon a consideration of all the facts, we are of the opinion that the rates now applied by the defendants to the transportation of these coffeepot percolators are excessive and that the rates applied to them ought not to exceed the rates applied to the transportation of first class merchandise; and an order will be so issued.

N. J. 1911.

CRANE IRON WORKS

CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.

S. W. 1911. 1911. Decided February 1, 1910.

The subject presented by the Crane Railroad Company for the complainant is that it is a common carrier by statute, and that it should be borne entirely by the complainant and which is subject under the guise of the absorption of a common carrier by a common carrier. Complaint dismissed.

WILLIAM A. FROST, et al. for complainant.

JOHN F. B. for Central Railroad Company of New Jersey.

CHARLES F. B. for Crane Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, C. C. 1911.

The subject presented by this complaint has already been exhaustively considered by the Commission in *Crane R. R. Co. v. Philadelphia & Reading R. Co.*, 15 I. C. C. Rep., 248, and the opinion in that case should be read in connection with the present discussion.

In that proceeding the Crane Railroad Company was the complainant, the prayer being that the defendants be required to establish joint rates with the complainant. The complaint was dismissed for the reason that the Crane Railroad Company could not be found upon that record to be a common carrier. It was observed in dismissing the complaint that even though that company were a common carrier no definite rates were put in issue nor were any definite points named between which such joint rates were prayed for. It was further said that possibly a different conclusion as to the public character of the Crane Railroad might be reached if it appeared that undue discrimination was resulting from the operations of that company.

The present complaint is by the Crane Iron Works and is framed to meet the objections and suggestions of the former opinion. While the Crane Railroad Company is a codefendant upon the record, the real defendant is the Central Railroad Company of New Jersey, which is designated as the defendant in this opinion.

1. It is alleged that the Crane Railroad Company is a common carrier and certain testimony in addition to that given in the former record, which has been stipulated into the present case, is given. This testimony tends to show that the Crane Railroad Company receives and delivers traffic upon its team tracks in the borough of Catasauqua and also that it transports freight between the tracks of the Lehigh Valley Railroad Company and a freight house maintained by that company for the receipt and delivery of general package freight in that community. The freight house is located upon the tracks of the Crane Railroad Company, is leased and operated by the Lehigh Valley Railway Company, the service of the Crane Railroad being confined to the movement of the loaded cars.

In the view taken of this case it has not been found necessary to determine whether the Crane Railroad is or is not a common carrier, and hence no opinion is expressed as to the effect of the additional testimony given upon that point.

2. It is alleged that the plant of the complainant is grouped with certain other plants of a similar nature in a defined territory to and from all points in which rates are the same; that deliveries of car-load freight are made to other industries in competition with the complainant at various points in this group but are not made at the industry of the complainant, and that thereby discrimination is worked against complainant.

The manifest meaning of this allegation is that at other points the defendant renders for the competitors of the complainant the service which the Crane Railroad renders for the complainant at its plant; that this is done either directly or by absorbing the charges of some railroad similar to the Crane Railroad.

Upon the hearing no testimony was offered by the complainant as to conditions at other plants similar to its own. The defendant Central of New Jersey in putting in its case called attention to this and stated that if any claim was to be made under this allegation it desired to affirmatively show that in no instance did it apply to other industries a rule different from that applied to the complainant. The Commissioner who heard the testimony stated that the defendant would not be required to introduce testimony of this kind until some testimony had been produced by the complainant in support of this branch of its case. No testimony was produced by either party upon the hearing and there is no such testimony before the Commission. We therefore dismiss this allegation in the complaint without expressing any opinion as to what the effect of the practice might be if shown to exist.

3. The complaint alleges that the defendant discriminates against the complainant, the Crane Iron Works, in that it absorbs the cost of delivery when the traffic is intended for other industries located upon

the line of the Crane Railroad, but declines to absorb similar charges in the case of the Crane Iron Works. It will be seen by reference to the original opinion that some half dozen manufacturing plants are located upon the tracks of the Crane Railroad and that cars are transported between these industries and the tracks of the defendant and also of the Lehigh Valley and the Philadelphia & Reading railroads. Down to about the time of the filing of this complaint it had been the custom of the defendant to pay the Crane Railroad 6 cents per ton for handling cars to all other industries upon its line except the Crane Iron Works. Some difficulty arose as to the publication of the tariffs under which this absorption was being made, and the defendant canceled its absorption tariff altogether, so that at the present time it is not paying the Crane Railroad Company in case of any industry upon its line. It did, however, do this down to July, 1909, and would be willing to continue the practice if it could lawfully do so, and we understand that the Lehigh Valley and the Philadelphia & Reading, whose relation to the Crane Railroad Company is in all respects the same as that of the defendant, Central Railroad of New Jersey, are still making these allowances. The complainant claims reparation with respect to the past, and we must, therefore, decide whether this practice upon the part of the defendant did constitute undue discrimination against the complainant.

In stating the view of the Commission upon this point it is necessary to briefly recapitulate the salient facts shown in the former report. The Crane Iron Works operates certain blast furnaces in the borough of Catasauqua, Pa. In the operation of its plant it is necessary to transport loaded cars received by rail to various points within the limits of its plant for unloading, to transport cars which have been loaded with its products from various points within the limits of its plant to the line of railway by which they are taken to destination, and it is also to some extent necessary to move cars from point to point within the plant itself. For this purpose the complainant, the Crane Iron Works, long ago laid down rails extending from a connection with the defendant to the various points within its plant where the cars were to be placed. The line of the defendant extends through the land of the complainant, and the point of connection between the railroad of the defendant and the railroad of the complainant is now and always has been upon the land of the complainant.

For the operation of these tracks the Crane Iron Works provided the necessary locomotive engines. When the former case was heard the equipment of the Crane Railroad consisted of five locomotives and a few dump cars. In the actual operation of the plant loaded cars destined for the Crane Iron Works were placed by the defendant upon a certain track known as the exchange track, from which they were

taken by the locomotive of the iron works and hauled to the point within its plant where they were required. When the car had been loaded for movement out, it was taken by the locomotive of the complainant and placed upon the exchange track, where the defendant received it. Cars were moved from point to point within the plant of the Crane Iron Works by these locomotives as might be desired.

For this service the complainant never has received and, down to the organization of the Crane Railroad Company, never had claimed that it should receive any compensation whatever from the defendant. It seems to have been admitted that these tracks and engines were a necessary part of the plant of the Crane Iron Works, whose operations could not properly be conducted without them.

In process of time certain other industries were located in near proximity to the land of the Crane Iron Works, but not upon its land, and these industries were so situated that loaded cars could only be transported between the tracks of the defendant and the other railroads in Catasauqua and the industry over the rails of the Crane Iron Works. For the purpose of accommodating these industries, the Crane Iron Works extended its rails beyond its own land to the different plants. Cars for these industries were placed upon the same track with those intended for the Crane Iron Works and were taken by the locomotives of the Crane Iron Works over the rails of that company to the industry. For this service the Crane Iron Works made to the industry a charge, which seems to have been usually \$2 per car. The different railroads bringing these cars to Catasauqua, including the defendant, paid to the Crane Iron Works, towards defraying this charge, at first 5 cents and subsequently 6 cents per ton. This condition seems to have existed for many years and during all this time the Crane Iron Works, complainant, neither claimed nor received any compensation for the handling of its own freight.

Under the statute of Pennsylvania a private railroad can not connect with a public railroad except for the handling of the business of the owners of the private railroad, and the question having arisen, the Crane Iron Works was advised by counsel that it had no lawful right to perform this switching service for these various industries, but that in order to legalize the transaction it would be necessary to incorporate a railroad. Thereupon, in 1905, the Crane Railroad Company was incorporated. The tracks and other property used by the Crane Iron Works in connection with its railroad were by that corporation conveyed to the Crane Railroad Company for a consideration of \$25,000. The Crane Iron Works conveyed to the railroad company a strip of land 10 feet wide wherever its rails were laid upon the land of the iron works, and also conveyed to it whatever right of way it might have in reaching the various industries served by it. As the

opinion in the former case states, the capital stock of both the Crane Iron Works and the Crane Railroad Company is owned by the Empire Iron & Steel Company, and the management of the Crane Railroad Company continued to be, after the incorporation, exactly as it had been before, and practically identical with that of the Crane Iron Works, although the operation and accounts of the two companies are kept entirely distinct.

While the Crane Railroad Company was organized in 1905, it did not for some reason begin business until the following year. Commencing then, that company has charged both to the other industries located upon its line and to the Crane Iron Works, \$2 per car for this switching service, and has insisted that the various railroads entering Catsauqua should absorb this switching charge.

The defendant has declined to make any allowance on account of cars delivered to the complainant, but has, as already stated, made an allowance of 6 cents per ton where the traffic was intended for other industries. The complainant insists that this is an unlawful discrimination against it.

The defendant urges that the Crane Railroad is not a common carrier, and apparently regards this as decisive against the claim of the complainant; but this is not apparent. If the defendant delivers freight to the competitor of the complainant at a point off its line and declines to make similar delivery to the complainant without justifiable excuse, that may be a discrimination, although the agent employed in the making of the delivery is a private carrier by rail, or indeed, although the means of delivery be not by railroad at all.

Upon the other hand, the complainant urges that the Crane Railroad became by its organization and operation a common carrier, and relies upon this as conclusive in its favor. It assumes that if that company be a common carrier the defendant must make the same allowance with respect to the Crane Iron Works, the complainant, which it makes to other industries upon its line.

To this reasoning we are unable to assent. In our view of the case the controlling inquiry should be, not the character of the servant which renders the service, but the character of the service rendered. Is the work which the Crane Railroad performs for the Crane Iron Works in the movement of these cars a work the cost of which should be borne by the complainant as a part of the operation of its plant or is it a transportation service which may be properly performed by a common carrier as a part of the service of transportation?

It is conceded that the railroad operations of the Crane Iron Works for itself were purely those of a plant facility down to the organization of the Crane Railroad Company. The incorporation of that company made no change in what was actually done. The cars continued to be received in exactly the same place and to be transported

in exactly the same manner, both for the Crane Iron Works and for the other industries. If this railroad was a plant facility as to the complainant before 1906 it continued to be a plant facility to exactly the same extent afterwards. Counsel for the complainant admitted that if to-day every other industry served by the Crane Railroad at Catasaqua were to be abolished the work done by the Crane Railroad for the Crane Iron Works would be purely that of a plant facility. How, then, does the fact that this railroad is extended beyond the limits of the Crane Iron Works change the nature of the service rendered for that corporation?

It is urged by the complainant that a railroad can not be a common carrier as to one person and a private servant as to another. Certain it is that a common carrier is subject to public supervision as to its operations of all kinds, but does it follow from this that the Crane Railroad Company, even if a common carrier, might not perform this work for the Crane Iron Works? It appeared in the former case that while since 1906 the Crane Railroad had charged the complainant \$2 per car for taking the car from the exchange track to the point where it was to be unloaded or for taking the loaded car from the point of loading to the exchange track, when cars were moved from point to point within the plant of the complainant a charge of 50 cents per car was made. If the Crane Railroad being a common carrier may properly move for the Crane Iron Works a car from point to point within its plant, why may it not, in the same manner, move cars between the exchange track and the point of loading and unloading?

It is urged that if the line of the Crane Railroad were to be extended and some other blast furnace were to be located upon it, the defendant would absorb the cost of delivering cars to this second blast furnace as it does to other industries upon its line and that a discrimination would thereby arise against the Crane Iron Works in favor of its competitor. But the force of this illustration is not obvious. The defendant now delivers to the Crane Iron Works upon its exchange track loaded cars and receives from the Iron Works upon that same track loaded cars. In the same way that company might, through the agency of the Crane Railroad, transport to the exchange track of a second similar industry inbound cars and receive on that track outbound cars. It would have no right to handle cars from this track to other points within the plant of this competitor. It might perform for that competitor exactly the service which it performs for the Crane Iron Works and no greater service. The real difficulty is in determining where the plant facility begins.

We do not decide here that the Crane Railroad Company is or is not a common carrier. We simply hold that the service performed by that railroad for the complainant is that of a plant facility, the expense of which should be borne entirely by the complainant and

which no railroad under the guise of the absorption of a switching charge may lawfully sustain.

The complaint attacks certain rates as unreasonable and asks for the establishment of certain joint rates between definite points. The complainant does not contend that these rates are unreasonable except by the amount of this switching charge, nor does it ask the establishment of joint rates except for the purpose of compelling the defendant to pay the Crane Railroad for the performance of this switching service. Since we hold that the delivery by the defendant is completed when cars are placed upon the interchange track and that it owes no duty to the complainant to receive loaded cars from it until they are put upon that track there is no occasion to examine in detail the rates referred to.

17 I. C. C. Rep.

No. 1050.
MONTGOMERY FREIGHT BUREAU
 v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted October 21, 1908. Decided February 8, 1910.

Complaint alleges that the adjustment of rates from and through the Ohio and Mississippi River crossings is unjustly discriminatory against Montgomery, Ala., and unduly preferential to Pensacola, Fla., and Mobile and Birmingham, Ala.; *Held*, That it is not unlawful for defendants to maintain lower rates from said river crossings to Pensacola and Mobile than to Montgomery, but that no rate from or through said river crossings to Montgomery may lawfully exceed the combination on Mobile; *And held further*, That circumstances and conditions do not warrant establishing at Montgomery the same rates that apply to Birmingham.

Horace Stringfellow and Gunter & Gunter for complainant.

Ed. Baxter, W. G. Dearing, and Sloss D. Baxter for Louisville & Nashville Railroad Company.

Ed. Baxter, Sydney R. Prince, and R. E. Steiner for Mobile & Ohio Railroad Company.

Claudian B. Northrop and Ed. Baxter for Southern Railway Company.

Ed. Baxter for Cincinnati, New Orleans & Texas Pacific Railway Company, Illinois Central Railroad Company, Nashville, Chattanooga & St. Louis Railway.

E. K. Voorhees for St. Louis & San Francisco Railroad Company.

W. J. Kessler for Mobile, Jackson & Kansas City Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This case was argued and submitted in October, 1908. During and immediately following the hearings and argument numerous changes in rates were made and some new transportation conditions were established at Montgomery which led the representative of complainant to request that further action by the Commission be postponed. In view of the possibility of satisfactory adjustment

being reached without decision by the Commission, request that action be withheld was complied with and that accounts for the delay in deciding the case.

Complainant is a voluntary association of business houses at Montgomery, Ala., which has for its purpose the promotion and protection of the business interests of that city.

The complaint charges that the class rates and the commodity rates to Montgomery from various points and gateways are unjust and unreasonable in their relation to the rates from the same points to Mobile and Birmingham, Ala., and to Pensacola, Fla., to the disadvantage of Montgomery; that the rate adjustments complained of subject Montgomery and its shippers, and the traffic in the various commodities, to unjust discrimination and unreasonable prejudice and disadvantage and give to Pensacola, Mobile, and Birmingham undue preference and advantage over Montgomery. The several rate adjustments complained of are as follows:

1. Class rates from Cincinnati, Ohio, Louisville and Columbus, Ky., Evansville, Ind., Cairo and East St. Louis, Ill., and Memphis, Tenn., to Montgomery, Ala., as compared with the class rates from said points of origin to Mobile, Ala., and to Pensacola, Fla.

2. Class rates from Kansas City, Mo., and Omaha, Nebr., to Montgomery, Ala., in comparison with the same rates from said points to Mobile, Ala.

3. Class and commodity rates from Chicago, Ill., to Montgomery, Ala., when compared with the same rates to Mobile, Ala., and to Pensacola, Fla.

4. Class and commodity rates from Kansas City, Mo., Omaha, Nebr., Sioux Falls, S. Dak., Lincoln, Nebr., St. Paul and Minneapolis, Minn., Milwaukee, Wis., Chicago, Peoria, and Springfield, Ill., Indianapolis, Ind., and other intermediate points, to Montgomery, Ala., as compared with the rates to Mobile, Ala., and to Pensacola, Fla.

5. The rates on classes 4, 5, and E from East St. Louis and other points taking the same rates and basing thereon to Montgomery, Ala., as compared with the same rates to Mobile, Ala., and to Pensacola, Fla.

6. The rates on woodenware, brooms, and other articles from St. Louis and East St. Louis to Montgomery, Ala., as compared with the same rates to Mobile, Ala., and to Pensacola, Fla.

7. Class rates from Cincinnati, Ohio, East St. Louis, and Cairo, Ill., Louisville and Columbus, Ky., and Memphis, Tenn., to Montgomery, Ala., in comparison with the rates from the same points to Birmingham, Ala.

Montgomery is located near the center of Alabama, in an agricultural section, and on the Alabama River. It had a population in 1900

of approximately 30,000 and its commercial interests are largely engaged in jobbing and distributing various kinds of merchandise, and to some extent in manufacturing. It is served by the following railroad lines:

The Louisville & Nashville Railroad, extending from Cincinnati, Ohio, Louisville, Ky., Evansville, Ind., St. Louis, Mo., and Memphis, Tenn., through Birmingham and Montgomery, Ala., to Pensacola, Fla., Mobile, Ala., and New Orleans, La.; the Mobile & Ohio Railroad, extending from St. Louis, Mo., and Columbus, Ky., to Montgomery, and Mobile, Ala., but traffic moving via this line to Mobile does not pass through Montgomery, and this defendant also forms part of a through route from St. Louis to New Orleans via Meridian, Miss., in connection with the New Orleans & Northeastern Railroad; the Central of Georgia Railway, extending from Montgomery, Ala., Birmingham, Ala., and Chattanooga, Tenn., to Savannah, Ga., but traffic from Birmingham via this line does not pass through Montgomery; the Western Railway of Alabama, extending from West Point, Ga., through Montgomery to Selma, Ala.; the Seaboard Air Line Railway, extending from Birmingham and Montgomery to Norfolk and Portsmouth, Va., Savannah, Ga., and Jacksonville, Fla.; the Atlantic Coast Line Railroad, extending from Montgomery, Ala., to Jacksonville, Fla., Savannah, Ga., Charleston, S. C., Norfolk and Richmond, Va.

In addition to the through lines of the Louisville & Nashville and Mobile & Ohio railroads, Mobile is also served by the Southern Railway and the Mobile, Jackson & Kansas City Railway, and the latter, in connection with the Illinois Central Railroad and the Gulf & Ship Island Railroad, forms an additional through all-rail route from St. Louis and other Mississippi River crossings and Ohio River crossings to Mobile.

The Louisville & Nashville Railroad serves Pensacola, Fla., by a branch connecting with its main line at Flomaton, Ala., and by another branch extending east from Pensacola to River Junction, Fla., where it connects with the Seaboard Air Line Railway, which, with the latter's connections, gives Pensacola another all-rail route from the east.

Montgomery is approximately 95 miles farther than Birmingham from all points of origin covered by the complaint. Mobile and Pensacola are 180 and 162 miles, respectively, farther than Montgomery from all said points of origin via the Louisville & Nashville, but from St. Louis to Mobile, via the Mobile & Ohio, the distance is only 38 miles greater than to Montgomery. The distances to Mobile and Pensacola, via all the other through routes, are considerably greater than to Montgomery. From all points of origin named in the complaint traffic destined to Mobile or Pensacola, via the Louisville & Nashville, must pass through Montgomery.

Mobile is located in southwestern Alabama on Mobile Bay, an arm of the Gulf of Mexico, and at the mouth of the Alabama River. Pensacola is located on Pensacola Bay, which opens directly into the Gulf of Mexico. Both places are important and highly competitive Gulf ports for import and export, as well as coastwise and interior trade. The Penn Steamship Line maintains steamer service from New Orleans to Tampa, via Mobile, and the Mobile & Gulf Steamship Company makes weekly sailings between New Orleans, Mobile, Pensacola, Apalachicola, and Carrabelle, and publishes rates to points on the Georgia, Florida & Alabama Railway.

The defendants contend that the present rate adjustments at Montgomery and at Pensacola and Mobile are just and fair in and of themselves, and in their several relations to each other, for the reason that the regular basis for establishing class rates from points of origin to southeastern territory has been generally observed, and that commodity rates to Montgomery have been based upon the Mobile combination (that is, the through rate to Mobile plus the local therefrom to Montgomery) and that if any higher commodity rate obtains at Montgomery it is so through error. However, at the time the complaint was filed there were a great many class and commodity rates to Montgomery that were higher than the Mobile combination. Many of these have since been corrected.

Complainant's main contention is that the lower adjustment of rates at Mobile and Pensacola unjustly discriminates against Montgomery. This is in principle substantially the same contention that was raised in *Commercial Club of Hattiesburg v. A. G. S. Ry. Co.*, 16 I. C. C. Rep., 534. It was there said:

We can not find that it is unduly discriminatory for the defendants to haul traffic to and from New Orleans, Mobile, and Gulfport at lower rates than they charge to and from Hattiesburg. The controlling effect of the Mississippi River and the Gulf justify that rate adjustment.

Mobile and Pensacola are Gulf ports at which the carriers serving those ports have established the same rates that are established by the carriers serving New Orleans. The New Orleans rates are controlled by the competition of the Gulf and of the Mississippi River, and carriers at Mobile, Pensacola, or Gulfport could not successfully maintain higher rates than apply at New Orleans.

The Alabama River is navigable as far up as Montgomery, and up to the time of the hearing of this case the rates on the steamers on that river were what are known as "package rates." They were made on the postage-stamp theory and were applicable to all points on the river; that is, the steamers carried in either direction the entire length of their routes for the same price that they charged to or from any intermediate point. On business from the west moving via water, the Mobile merchant, therefore, had a decided advantage over

the Montgomery merchant in the matter of total rates to intermediate points; in fact, the Mobile dealer could in many instances move traffic that way to Montgomery itself cheaper than the Montgomery dealer could get it all-rail, but it appears that the difference in service and delivery was such that but little traffic was so moved. Whatever the phase of the situation might be with relation to the rates on the river it was one for which the rail carriers could not be held responsible. It appears that for a long time the rates between Mobile and Montgomery via the river steamers were the same as the all-rail rates. Reductions in the river rates was one of the changed transportation conditions at Montgomery previously referred to.

The circumstances and conditions surrounding and existing at Mobile and Pensacola which enter into and influence the making of rates are so dissimilar from those at Montgomery as to justify lower rates to Mobile and Pensacola than to Montgomery.

The large traffic territory lying south of the Memphis division of the Southern Railway and east of the Mobile & Ohio Railroad including Montgomery but not Mobile, is called "Southeastern Territory." The defendants show that the rates from St. Louis and East St. Louis to this territory are made by using certain differentials higher than the rates from Cairo to the same destination. This is true as to the class rates and as to some commodity rates. These differentials are commonly termed the "Southeastern differentials" and, together with the so-called Mississippi Valley differentials which will be later referred to, they are used to some extent in making rates to the Southeastern Territory from the various Ohio River crossings and Memphis. The Southeastern differential on first class is 23 cents above the first class rate from Cairo.

Defendants also state that the rates from Cairo to Montgomery are the same as the rates from Louisville, and that the rates from Cincinnati are certain differentials over the rates from Louisville, that differential being on first class 10 cents.

It also appears that the class rates from Louisville and points taking the same rates are made the same as from St. Louis to New Orleans and to Mobile, and that the rates from Cincinnati to New Orleans and to Mobile are certain differentials higher than from St. Louis, but not more than 110 per centum of the Louisville rates. Defendants insist that there is no relation between the rates from St. Louis to Montgomery and the rates from Cincinnati to Montgomery.

The rates are the same from all of the Ohio River crossings to Atlanta, which is claimed to be the main basing point in Southeastern Territory. The all-rail rates from Louisville to Atlanta are and for many years have been the same as the rail-and-water rates from

Baltimore, and it is claimed that the rail-and-water rate from Baltimore to Atlanta controls the all-rail rate from Louisville. This adjustment, however, is not strictly observed as to the classes which take the lower rates. Some of the class rates from St. Louis to Atlanta and to Montgomery are the same, but on the fourth and fifth classes and on classes B, C, D, E, H, and F are lower to Montgomery than to Atlanta. The first class rate from Louisville to Montgomery is 8 cents per 100 pounds higher than from Louisville to Mobile, and from St. Louis to Montgomery the first class rate is 31 cents per 100 pounds higher than to Mobile. The local first class rate from Mobile to Montgomery is 50 cents. The class rates from St. Louis to Columbus, Eufaula, Macon, and Augusta are the same and are 5 cents higher, first class, than to Atlanta.

The first class rates from Cincinnati, Louisville, Cairo, and East St. Louis, respectively, to Birmingham are each 19 cents lower than the first class rates from the same points to Montgomery. The first class rate from Cincinnati to Birmingham is 10 cents higher than from Louisville or Cairo, and from St. Louis to Birmingham the first class rate is 23 cents higher than from Louisville or Cairo. The class rates from Nashville are the same to Birmingham and to Montgomery except on classes 2, 3, 4, 5, and 6, which are higher to Montgomery.

The rates to New Orleans and Mobile from Cairo are the Mississippi Valley differentials, 15 cents per 100 pounds first class under the rates from St. Louis.

Effective February 1, 1906, the commodity rates from Ohio and Mississippi River crossings to Montgomery and Mobile, Ala., were revised on the basis of the Mississippi Valley differential, but no change was made in the then existing rates to Montgomery, which were already lower than would result from the application of said basis. In doing this Cairo was taken as the basing point because the Mobile combination from that point affected a greater number of rates than from any other Ohio River crossing. They used the Mississippi Valley differential because the use of the Southeastern differential would have made the rates from New Orleans cut the Mobile combination. The rates from Evansville, Louisville, and Cincinnati were made with the customary relation to rates from Cairo, and it is stated that in so doing numerous rates from Cincinnati, Louisville, and Evansville to Montgomery were made lower than they would have been had the Southeastern differential been used.

An examination of the all-rail rates from the Atlantic seaboard cities shows that the first class rates from Boston, New York, Philadelphia, and Baltimore to Atlanta are less than the rates from said cities to Montgomery by 3 cents per 100 pounds. From said eastern

cities to Birmingham the first class rates are higher than to Montgomery by 6 cents per 100 pounds first class. Taking first class as illustrative, the rates from the Virginia ports, Norfolk, Richmond, etc., to Atlanta are 4 cents per 100 pounds higher than to Augusta; to Montgomery 3 cents per 100 pounds higher than to Atlanta; to Birmingham 1 cent per 100 pounds higher than to Montgomery; to Columbus, Ga., 3 cents per 100 pounds higher than to Atlanta, or the same as to Montgomery; and to Eufaula 15 cents per 100 pounds higher than to Columbus. No fixed and definite basis for the establishment of rates to Southeastern Territory from Mississippi and Ohio River crossings has been applied. Apparently a general basis for establishing rates to Southeastern Territory has been subject to many variations and different applications in response to new conditions, competition of water and of new rail carriers, intrastate adjustments, etc. This territory, with the Atlantic Ocean on the east, the Gulf of Mexico on the south, the Mississippi River on the west, the Ohio River on the north, and pierced by many navigable rivers, is especially sensitive to competitive transportation conditions and a peculiarly difficult section in which to maintain relative adjustments. The rates to Montgomery bear no fixed and certain relation to other points whereby a change in the rate at the one would work a similar change in the other. Farther east, however, there is an adjustment under which rates to many points are based upon Atlanta and change with any change at Atlanta.

It is proper to here note that on the records in other cases before this Commission it appears that some, at least, of the seeming inconsistencies in the rate adjustment in the Southeastern Territory result directly from an effort to do substantial justice to various distributing or jobbing cities.

The difference in first class rates from Kansas City and from Omaha to Mobile is 17 cents per 100 pounds in favor of Kansas City, while the difference from the same points to Montgomery is but 2 cents per 100 pounds in favor of Kansas City. These rates are made in combination on Memphis.

The rates from Chicago, etc., to New Orleans and Mobile are made by using differentials, 20 cents first class, to the Mississippi River and adding thereto the rates from St. Louis. On this basis the rate from Chicago to Mobile or Pensacola is \$1.10 per 100 pounds first class. The rates from Chicago to Montgomery are made in combination on the Ohio River, using proportional rates, 35 cents first class to the river, and 98 cents from Cairo to Montgomery, total rate \$1.33, which equals the rate made by adding the Southeastern differential of 23 cents per 100 pounds to the Mobile rate. The full combination on Mobile would be \$1.60.

The adjustment of the rates at Mobile and Pensacola and at Montgomery is such that by using the carload rate in and the less-than-carload rate out, Mobile and Pensacola have an advantage over Montgomery in trading in intermediate distributing territory and are able to reach more than half way to Montgomery. But it is argued that this is the right of the Gulf cities because of their natural advantage of location.

By agreement at the time of the oral argument the complainant and defendants prepared a map indicating the extent of the territory reached by Montgomery in successful competition with the jobbing towns of Opelika, Eufaula, and Columbus on business coming from Cincinnati, Louisville, Evansville, Cairo, and St. Louis, which shows that under the average of the class rates and the rates on corn, flour, and special iron articles Montgomery has the advantage more than half way in each instance.

Defendants earnestly contend that the Mobile combinations as applied to commodity rates from St. Louis and the Ohio River crossings make just and reasonable rates and that they give to Montgomery the benefit of the competitive conditions at Mobile as well as the competitive influences of the Alabama River between Mobile and Montgomery. The all-rail class rates from Mobile to Montgomery are higher than the scale of rates made by the Alabama railroad commission applicable to the steamers plying between Mobile and Montgomery and the question whether the rail carriers in establishing their class rates between these points gave full effect to the competition of the river steamers is somewhat important. The fact that traffic moves principally by rail and is not attracted to the river indicates that shippers prefer the rail movement even at the higher rate.

Complainant prays that the Commission establish the same rates from the various points of origin to Montgomery that are now in effect from such points to Birmingham. Prior to the time that the Kansas City, Memphis & Birmingham (now St. Louis & San Francisco) Railroad built its line to Birmingham, Montgomery and Birmingham took the same rates. The advent of that new line, terminating at Birmingham, created new conditions at Birmingham and resulted in some new adjustment of rates at that point. When the rates to Birmingham were so reduced no change was made at Montgomery. Aside from the contention that a lowering of the rates to Montgomery to the Birmingham basis would require readjustment of the rates at all other points, and the fact that the Frisco line reaches direct from St. Louis and Kansas City and Memphis to Birmingham and does not reach Montgomery, there is the question of distance, Birmingham

being 95 miles nearer the points of origin than Montgomery. The traffic manager of the Louisville & Nashville Railroad testified:

It is true that from Memphis to Montgomery and from Memphis to Birmingham the distance is less than the distance from the Ohio River, but distance is not the measure of the differential, nor is distance the measure of the rate or the relative rates.

This is corroborated by the rate schedules.

It is stated that a reduction in the rates to Montgomery would necessitate similar reductions to all the basing points in South-eastern territory, including Birmingham, Chattanooga, Atlanta, Macon, Augusta, Opelika, Columbus, and Eufaula, because the bases used in making rates into that territory have fixed the relation of the rates to all of those points. It is here again noted that many of these adjustments have resulted from former decisions of this Commission and of the courts. It is apparent that competition of commodities from different points of origin or production materially affects many of these rate adjustments. It is further contended that the basis of relationship was established many years ago by Judge Cooley, acting as arbitrator for various lines entering South-eastern territory. It is not understood that all of these relationships of rates were so arbitrated, and examination of the tariffs shows that the basis then established has been departed from in many instances. Some of the points then grouped to take the same rates no longer take the same rates and others that were then given different rates now take the same rates.

Summarizing the facts as they apply directly to the specific complaints which are noted by number in the earlier pages of this report it appears:

1. Class rates from the various Ohio River and Mississippi River crossings to Montgomery are higher than from the same points to Mobile or Pensacola. We think that justification for the application of higher rates to Montgomery than to Mobile and Pensacola is shown, and the only question is, How much higher can those rates justly be? It has been seen that the local first class rate from Mobile to Montgomery is 50 cents per 100 pounds, and it is seen that in most instances the rates from the various river crossings to Montgomery are lower than the Mobile combination. If it were shown that Montgomery is unjustly discriminated against as compared with any other locality similarly conditioned and situated, the fact that removal of that discrimination would cause disturbance of rates at other points would be of little weight. But when it appears that a change would, as admitted by complainant's representative in this case, be followed by changes at competitive points which would restore the present relation of rates, and where it is not shown that the

existing rates yield to the carriers undue and excessive revenues, justification for change is not found.

2. The class rates from Kansas City, Mo., and Omaha, Nebr., to Montgomery are made in combination on Memphis. The first class rate from Kansas City to Mobile is \$1.15 and to Montgomery, based upon Cairo or upon Memphis, \$1.74 per 100 pounds. This rate to Montgomery exceeds the full combination on Mobile by 9 cents. The first class rate from Omaha to Mobile is \$1.32 and to Montgomery \$1.76 per 100 pounds. The Mobile combination would be \$1.82.

3. The rates from Chicago to Mobile and Pensacola are a combination of differential rates to the Mississippi River plus the rates from St. Louis to Mobile or Pensacola. The rates from these points of origin to Montgomery are 23 cents first class, higher than to Mobile or Pensacola, which results in a first class rate 27 cents less than the Mobile combination.

4. The class rates from Kansas City, Omaha, Chicago, and other points taking the same rates are discussed under paragraphs numbered 2 and 3. Nothing materially different is to be said with regard to the commodity rates from these points of origin.

5. The rates on classes 4, 5 and E from East St. Louis to Montgomery are the same as from St. Louis, and are, respectively, 74, 60, and 52 cents per 100 pounds. To Mobile or Pensacola they are, respectively, 50, 40, and 28 cents per 100 pounds. These rates to Montgomery are the full combinations on Mobile. It is understood that an important part of the traffic moving through East St. Louis to Montgomery is embraced in these classes, but the propriety of singling them out for special consideration or action is not apparent.

6. Rates on woodenware, brooms, and other articles from St. Louis and East St. Louis to Montgomery as compared with the same rates to Mobile or Pensacola are included in the general principle of the adjustment of rates from St. Louis to these points. Certain mixtures are allowed at Mobile which are not allowed at Montgomery. This appears to be so because the carriers at Mobile meet the competition fixed at New Orleans by other carriers and do not choose or find it necessary to extend it in full to Montgomery.

7. Class rates from the various river crossings to Montgomery as compared with same rates to Birmingham. As has been seen, Birmingham is considerably nearer to each of the several river crossings than is Montgomery, and is directly intermediate to Montgomery as to most, if not all, of this traffic. The rates from the Mississippi River crossings to Birmingham are practically controlled by the Frisco Lines, which do not reach Montgomery. It does not therefore appear that the demand for the application of the same rates from these various river crossings to Birmingham and to Montgomery is justified.

Obviously there is competition of carriers and of markets and of commodities in this territory as between the Atlantic seaboard and the west. It has been seen that via all-rail, and also via the Virginia ports, Montgomery has a more favorable rate adjustment from the Atlantic seaboard than has Birmingham.

Many other questions of detail in the rate adjustment were raised which it is not necessary to especially refer to in this general review of the situation. The controlling effect of water competition upon rate adjustments in the southeast and the propriety of maintaining rates to intermediate points higher than to terminal and basing points, making the intermediate rates in combination on such terminal or basing point, have been passed upon in numerous cases by this Commission and by the courts on appeal from decisions of the Commission, and must be considered as settled questions. *Board of Trade of Troy v. Alabama Midland*, 6 I. C. C. Rep., 1; *Interstate Commerce Commission v. Alabama Midland*, 168 U. S., 144; *Fuller E. Calloway v. L. & N.*, 7 I. C. C. Rep., 431; *Interstate Commerce Commission v. L. & N.*, 190 U. S., 273; *Railroad Commission of Georgia v. Clyde Steamship Co.*, 5 I. C. C. Rep., 324; *Interstate Commerce Commission v. W. & A. Ry.*, 181 U. S., 29.

In *Board of Trade of Troy v. Alabama Midland*, *supra*, the complaint was against the rate adjustment at Troy based upon the rate to Montgomery plus the local back to Troy, and that adjustment was upheld by the court.

In view of the facts referred to, and the decisions which must be accepted as controlling, we are unable to find that the defendants unjustly discriminate against Montgomery by maintaining lower rates to Mobile or Pensacola than to Montgomery, provided no rate to Montgomery is higher than the combination on Mobile. As has been stated, at the time this complaint was brought many of defendants' rates to Montgomery were higher than the combination on Mobile. Defendants admitted the injustice of such rates and stated that all such would at once be corrected. In withdrawing request for further postponement of determination of this case, however, complainant's representative states that there are still rates from Kansas City and Missouri River territory to Montgomery via Mobile lower than to Montgomery direct. It is also stated that on account of certain transit and reshipping privileges and practices, Montgomery dealers in grain and grain products are obliged, in order to get the lowest rates, to buy on a delivered-at-Mobile price and reship to Montgomery, instead of being able to buy for delivery at Montgomery.

Obviously there is no justification for a rate from or through any of the Ohio or Mississippi River crossings to Montgomery on any

commodity that is higher than the combination on Mobile, and we so find. And it makes no difference whether the higher charge to Montgomery than the combination of charges on Mobile is effected by specific rates or by transit or reshipping privileges accorded by the carriers. Our conclusions are based somewhat upon the fact that generally, the rates to Montgomery are less than the combination on Mobile, and nothing that we have said is to be considered or understood as justification for increasing any rate to Montgomery that is less than the combination on Mobile.

No order will be entered at this time. The carriers will be expected to immediately correct any adjustment which results in a higher charge to Montgomery direct than the combination on Mobile and if such adjustment is not immediately arranged, complainant may bring the matter to our attention for such order as may be necessary.

17 I. C. C. Rep.

No. 1174.

CORN BELT MEAT PRODUCERS' ASSOCIATION

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted January 7, 1910. Decided February 8, 1910.

1. Complainant alleges in its supplemental petition that defendants have not fairly complied with the order of the Commission in the former report with respect to feeding-in-transit privilege, but since the filing of this petition certain changes have been made by defendants in their feeding-in-transit tariffs, which now remove all objection of complainant upon this point.
2. Certain tariffs of defendants in other states provide that when double-deck cars can not be furnished and single-deck cars are used instead for the convenience of the carrier, two single-deck cars shall be treated in computing the rates and the minimum as one double-deck car; *Held*, That the tariffs of defendants establishing these rates from Iowa points ought to contain the same provision, with the limitation that it shall apply only when reasonable notice has been given by the shipper of his desire to use the double-deck car.
3. Certain territorial regroupings and reductions in cattle rates are prescribed. The advances in hog rates made by the defendants since the publication of the original opinion are condemned and the rates then in effect are restored.
4. No order will be made in this case for sixty days. Unless defendants within that time have filed schedules putting into effect the rates suggested in this opinion, the Commission will take up the case again and proceed to the making of a definite order.

Clifford Thorne for complainant.

Hale Holden and *George H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

William Ellis, *F. G. Wright*, and *J. G. Love* for Chicago, Milwaukee & St. Paul Railway Company.

Winston, Payne, Strawn & Shaw, *G. W. Markham*, and *Blackburn Esterline* for Chicago Great Western Railroad Company.

S. A. Lynde and *F. P. Eyman* for Chicago & North Western Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & Mexico Railway Company; and St. Louis, Kansas City & Colorado Railroad Company.

Blewett Lee, A. P. Humburg, and W. E. Keepers for Illinois Central Railroad Company.

Charles A. Clarke, and Boardman & Lawrence for Iowa Packers, interveners.

H. W. Byers, Attorney-General; *W. L. Eaton*, Railroad Commissioner of Iowa; and *George Cosson* for Board of Railroad Commissioners of Iowa, interveners.

U. H. E. Boardman for Independent Packers, interveners.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Commissioner:

JUNE 27, 1908, the Commission promulgated an opinion in the above case (14 I. C. C. Rep., 376), holding that the defendants should accord the same feeding-in-transit privileges in Iowa which were given in other states, and suggesting that rates upon live stock from Iowa destinations to Chicago should be readjusted by a new arrangement of territorial groups from which the various rates applied. The complainant conceiving that these suggestions have not been complied with, has filed a supplemental complaint, which is now before us for disposition, and which raises three points for consideration:

1. The complainant alleges by its supplemental petition that the defendants have not fairly complied with the order of the Commission with respect to feeding-in-transit privileges. Since the filing of this petition certain changes have been made by the defendants in their feeding-in-transit tariffs, which now remove, as we understand it, all objection of the complainant upon this point.

2. The original complaint alleged that rates upon sheep from Iowa points to Chicago were excessive and asked that the Commission establish rates in double-deck cars. That point was not much referred to in the testimony, and not at all in the argument before the Commission, with the result that it was entirely overlooked in the former report. The matter is again called to our attention by the supplemental complaint, and has been considered more fully in the later hearings upon this petition.

Sheep in single-deck cars will only load from 12,000 to 14,000 pounds, and it is therefore necessary, if reference is had to the cost of the service, to apply a higher rate than is established for the movement of other kinds of live stock which load more heavily. The rates from Iowa are distinctly higher in case of sheep than with hogs or cattle.

In double-deck cars sheep can readily be loaded to a minimum of 22,000 pounds, and when so handled the cost of transportation but little, if any, exceeds that of cattle. It is therefore more economical to transport sheep in double-deck cars whenever the equipment is available, and the complainant insists that rates shall be established for double-deck cars which do not exceed the rates in effect upon cattle.

It appears that all the defendants, with possibly one exception, make rates in states adjoining Iowa which are the same for the transportation of sheep in double-deck cars and with the same minimum as for cattle. The Illinois Central suggested that it had no facilities in the state of Iowa for the loading of sheep into double-deck cars; but we are satisfied that it would impose no substantial burden upon that company to provide such facilities. The movement of sheep from Iowa points is in no degree as extensive as that of cattle and of hogs, but there appears to be no good reason why less favorable rates for the transportation of this kind of stock should apply from Iowa than apply from and in adjoining states. In our opinion the present rates from points in Iowa to Chicago for the transportation of sheep are unreasonable and should not exceed, when the movement is in double-deck cars, the rates applied for the transportation of cattle, the minimum being the same.

Some, if not all, of the tariffs of these defendants in other states provide that when double-deck cars can not be furnished and single-deck cars are used instead for the convenience of the carrier, two single-deck cars shall be treated in computing the rate and the minimum as one double-deck car. In our opinion the tariffs of the defendants establishing these rates from Iowa ought to contain the same provision, with the limitation that it shall apply only when seasonable notice has been given by the shipper of his desire to use the double-deck car.

3. The point mainly discussed in this proceeding was the territorial regrouping as applied to cattle rates. In the original proceeding the complainant had attacked as unreasonable rates upon live stock from points in Iowa to Chicago, and in substantiation of the claim that these rates were excessive, had shown, by an elaborate system of tables, that the rates in question exceeded the corresponding state rates of Iowa, Illinois, Missouri, and Wisconsin, and the interstate rates from points in Missouri and Wisconsin to Chicago, and from points in Missouri to St. Louis and Kansas City. The deduction of the complainant from these tables was that the cattle rates from Iowa exceeded these standards of comparison by from 25 to 40 per cent. The hog rates, while said to be higher than those in neighboring territory, were not seriously complained of, and the

attention of the Commission was directed mainly to the rates upon cattle.

The complainant insisted that the defendants should be required to maintain rates from Iowa not exceeding those with which comparison had been made, and that therefore the cattle rates should be reduced on the average at least 25 per cent. While the Commission failed to find, for reasons pointed out in the opinion, that the cattle rates in territory where the comparisons were instituted were as much lower than those under consideration, as the complainant apparently showed by its tables, still it did find that these rates from Iowa were distinctly higher than the state rates of Iowa, Illinois, and Wisconsin, and also higher than the interstate rates from Wisconsin and Missouri to Chicago. Notwithstanding this, in view of the great loss of revenue which would result to the defendants, we declined to reduce these rates, as requested by the complainant, but did express the opinion that certain changes should be made in the territorial groups from which these rates applied, which would amount to a reduction of these cattle rates. The conclusion of the Commission was stated in the following words:

While, however, we are of the opinion that the general level of these live-stock rates from Iowa ought not to be reduced, we do think that the grouping should be revised. The 23½-cent rate which applies at Omaha is carried for 150 miles east before the process of grading down to the Mississippi River begins. This is too far. There is a strip along the Missouri River from 50 to 75 miles in width to which this 23½-cent rate may properly be applied as a blanket rate, but after that point is passed we think the rate should be gradually reduced toward the east. It is this broad group of 23½ cents which brings up the average Iowa rate. Under a proper grouping the discrimination in favor of Wisconsin and Missouri, which these average rates from Iowa now show, would be considerably diminished.

This manifestly means that, in the opinion of the Commission, there ought to be no general, no substantial, reduction in live-stock rates from Iowa, but that there should be a regrouping of those rates which would effect a reduction sufficient to be reflected in the average of Iowa rates as compared with those of other territory.

Upon the publication of this opinion the defendants did readjust their live-stock rates from Iowa to Chicago by reducing certain cattle rates and advancing certain hog rates, and these rates are now in effect and may be denominated "present rates." The number of reductions was less than the number of advances. Statements furnished by the defendants indicate that the total loss of revenue to all the defendants occasioned by these reductions in cattle rates amounts to approximately \$4,000 annually, and that losses in hog rates occasioned by changes amount to \$1,600, approximately. The attorney complainant denies the accuracy of the last statement and that the result of the changes made in the hog rates was not

a loss, but rather a gain, and it seems probable that in this he is correct. The figures furnished contain no statement as to hogs upon the Chicago & North Western and the Illinois Central Railways, and they do show a loss of \$8,611 upon the Chicago, Rock Island & Pacific, which appears to be an error. It seems probable that the net result of all these changes has been a gain to the carriers.

Several hearings have been had upon this supplemental petition, in the course of which various propositions have been made by both parties, indicating what, in their opinion, would be a fair compliance with the suggestion of the Commission in its original report. Finally the Commission itself requested the defendants to prepare a map and schedule of rates, taking Denison upon the North Western line as the most easterly station in the 23½-cent group, and Lisbon as the most easterly station in the 19-cent group and dividing the intervening territory, about 225 miles in extent, into one-half-cent groups, making the westerly groups somewhat larger than the easterly.

In compliance with this suggestion the defendants have prepared and presented a map known as "Eyman, X," and have presented certain schedules, giving the rate from each station in Iowa upon the lines of the several defendants.

Upon the presentation of this map and accompanying schedules the complainant was requested to state its objection of the rates thus arrived at, and has filed, upon its part, a map marked "Exhibit Z," together with certain schedules showing rates from various points to Chicago. Both parties have been fully heard. The defendants protest that no reduction or change should be made in the present rates, while the complainant insists that no action less than the rates specified in its Exhibit Z will meet the requirement for a fair regrouping of the state, and that rates so established would still be excessive.

The Commission also required the defendants to work out from actual transactions a statement showing the annual loss of revenue over present rates which would result by an application of the rates referred to in connection with Map X.

This statement shows a loss of \$40,000, approximately, on cattle.

We are of the opinion that, on the whole, the rates stated in connection with Map X would reasonably satisfy the thought of the Commission as to the regrouping of these cattle rates, and that the rates specified in this map and the schedules accompanying it are just and reasonable rates, to be applied to the transportation of cattle from the various stations named to Chicago, the minimum to be that now in force.

The railroad commission of the state of Iowa has intervened in this proceeding in favor of the complainant, and the attorney-general of that state was heard upon the argument of this supplemental

petition. After testimony had been taken, and while the case was awaiting argument, the railroad commission adopted a resolution to the effect that the present hog rates from Iowa to Chicago ought not to be disturbed in this proceeding, and, still later, that resolution was rescinded by that commission.

As already said, the rates upon hogs are much lower in proportion than those upon cattle. It seems to be generally conceded that hog rates, owing to the lighter loading, may properly exceed those upon cattle, but these Iowa rates are seldom higher and are sometimes lower, there being no uniform relation in different parts of the state. This may be due to the existence of certain packing establishments at different points in Iowa which must purchase and slaughter hogs in competition with Chicago, usually for the same market. These packing interests intervened in the original case and were heard both then and in the present supplemental proceeding.

The only justification offered by the defendants for advancing rates on hogs is that those rates were too low in comparison with cattle rates. It is said that the Commission has approved cattle rates from Iowa, and therefore hog rates should be increased.

But it was not cattle rates alone upon which an opinion was expressed, but rather the live-stock rates, particularly the combined cattle and hog rates. If these rates on hogs are to be advanced to correspond with similar rates in other territory, then cattle rates should be correspondingly reduced.

In view of the above facts we have decided not to require a regrouping of the state in reference to rates on hogs, as well as those on cattle, but to leave in effect the original rates. We are of the opinion that the advances ought not to have been made; that the advanced rates are unreasonable and that future rates should not exceed those in effect when the original case was decided.

While the rate of 23½ cents applies from most points in Iowa upon the Missouri River, and is therefore the maximum rate upon the west, there is a section in the northwestern portion of the state which has in the past taken a rate of 25 cents. That territory was not considered by the Commission in its former opinion and was not mentioned in the suggested regroupings made by the defendants at the request of the Commission. Both parties have, however, referred to these rates, and it is highly desirable that this whole controversy should be ended now.

This part of the state is rather off what may be termed the main line of traffic. The distance to Chicago from this territory is somewhat greater than from other Missouri River points, and it appears upon examination that rates on grain and other similar commodities

from some portions of the territory are higher than from the Missouri River. On the whole, we are of the opinion that this territory should be divided into 2 groups, taking rates of 24 and 24½ cents.

In 1904 railroads entering Chicago applied to shipments to the Union Stock Yards a terminal charge of \$2 per car, the lawfulness of which has since been, in one form and another, continuously in controversy. The Commission has several times held that all live-stock rates to the Union Stock Yards were excessive to the amount of \$1 by reason of the imposition of this charge, and ordered the charge reduced. The Supreme Court of the United States has recently decided that the Commission should have acted, not upon the terminal charge, but upon the rate up to Chicago. In pronouncing these live-stock rates from Iowa as fixed by the Commission reasonable, we have no reference to this terminal charge. It is evident that this applies to rates from all portions of Iowa alike and not merely to those from the groups which are recast.

No order will be made for sixty days. Unless the defendants within that time have filed schedules putting into effect the rates suggested in this opinion we shall take up the case again and proceed to the making of a definite order.

17 I. C. C. Rep.

No. 2282.

SUNNYSIDE COAL MINING COMPANY

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted December 20, 1909. Decided February 8, 1910.

Complainant shipped two carloads of coal from Strong, Colo., to Quinn and Cottonwood, S. Dak., over a route taking combination rates. There were open to the complainant joint through rates over another route under which this coal might have moved, which compare favorably with other rates in that section, and which are reasonable. Instead of availing itself of those rates the complainant saw fit to ship this coal to Rapid City and thence to destination. The fact that it might have availed itself of a reasonable joint rate is no reason why it might not adopt the route selected; nor why it should not be accorded from Rapid City to destination a reasonable local rate; but the Commission is not satisfied upon this record that the rates charged were in this case unreasonable, although they are abnormally high and would be excessive under ordinary conditions. Complaint dismissed.

C. W. Durbin for complainant.

E. N. Clark and *T. L. Phillips* for Denver & Rio Grande Railroad Company.

S. A. Lynde for Pierre, Rapid City & Northwestern Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant corporation on August 27 and 28, 1908, shipped two carloads of coal from its mine at Strong, Colo., located on the Denver & Rio Grande Railroad, to Quinn and Cottonwood, S. Dak., respectively.

The first carload weighed 80,300 pounds and complainant paid a joint rate from Strong to Rapid City, S. Dak., of \$4 per ton plus the local rate of \$1.90 from Rapid City, a distance of 65 miles, to Quinn, or a total charge of \$236.89. The second shipment weighed 64,600 pounds, on which complainant paid the joint rate of \$4 from Strong to Rapid City, plus the local rate of \$2.20 from Rapid City to Cottonwood, a distance of 76 miles, or a total charge of \$200.26. The Colorado & Southern has the use of the Denver & Rio Grande tracks from Strong to Walsenburg.

The complainant does not ask for the establishment of a joint through rate from Strong to either of the destinations above named via the route over which these shipments moved, but asks that the local rates of \$1.90 and \$2.20 on interstate shipments of coal from Rapid City to the above-named destinations be reduced to 85 cents and 90 cents, respectively, and that reparation be awarded on that basis.

At the time these shipments moved there was and still is in effect from Strong to Quinn and Cottonwood, a joint rate via the Colorado & Southern, Chicago & North Western, and Pierre, Rapid City & Northwestern railways of \$5.41 per ton to the former point, a distance of 731 miles, and \$5.52 to the latter, a distance of 742 miles. Both shipments were, however, routed by the complainant via the Denver & Rio Grande, Chicago, Burlington & Quincy, Missouri River & Northwestern, in care of the Pierre, Rapid City & Northwestern at Rapid City, and charges were assessed as above stated. Reparation is asked on the car which moved to Quinn in the sum of \$42.04, and on the car which moved to Cottonwood, \$44.99.

The Pierre, Rapid City & Northwestern Railway, which operates from Rapid City to the two points above named, applies the Class D rate to coal under its South Dakota distance tariff. This rate is sanctioned by the South Dakota commission, and is applied generally in that territory.

The Pierre, Rapid City & Northwestern Railway is 165 miles in length. In that distance are 494 bridges and culverts and not to exceed 1½ miles of straight track. Several of its grades exceed 1½ per cent. The maximum haul for the engines in use does not exceed 400 tons. The soil is of such nature as to require the constant use of ballast to keep the roadbed in condition to operate at all. Traffic is exceedingly light, live stock being the principal item, and the cost of operation per ton-mile for the last year 17.42 mills.

There was open to the complainant joint through rates under which this coal might have moved, which compare favorably with other rates in that section, and which are, in our opinion, reasonable. Instead of availing itself of those rates the complainant saw fit to ship this coal to Rapid City and thence to destination. The fact that it might have availed itself of a reasonable joint rate is no reason why it might not adopt the route selected; nor why it should not be accorded from Rapid City to destination a reasonable local rate; but we are not satisfied upon this record that the rates charged were in this case unreasonable, although they are abnormally high and would be excessive under ordinary conditions.

The complaint will be dismissed.

No. 2901.
GEORGE TRITCH HARDWARE COMPANY
v.
RUTLAND RAILROAD COMPANY ET AL.

Submitted January 20, 1910. Decided February 8, 1910.

Reparation awarded because of unreasonable rate charged from the Missouri River to Denver, Colo., on one carload of hand agricultural implements as part of a through shipment from Wallingford, Vt.

G. M. Stephen for complainant.

Wallace T. Hughes and *M. L. Bell* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

July 17, 1908, the complainant received at Denver, Colo., one carload of hand agricultural implements, weighing 24,617 pounds, shipped from Wallingford, Vt., for the transportation of which it was charged and paid \$397.31. These charges were assessed upon the basis of 31 cents, minimum 24,000 pounds, up to the Mississippi River, and \$1.07, minimum 30,000 pounds, from the Mississippi River to Denver.

At the time the shipment moved there was no joint through rate in effect between Wallingford and Denver. Hand agricultural implements in carloads took, under Official Classification, the fifth class rate, which then was from Wallingford to the Mississippi River 31 cents, minimum 24,000 pounds. No question is made as to the correctness of the charge up to this point.

Between the Mississippi River and Denver the following rates were in effect:

A commodity rate of 27 cents, minimum 30,000 pounds, from the Mississippi River to the Missouri River; a commodity rate of 80 cents, minimum 30,000 pounds, from the Missouri River to Denver. Under Western Classification hand agricultural implements in carloads were third class, minimum 24,000 pounds, and the third class rate from the Mississippi River to the Missouri River was 35 cents, from the

Missouri River to Denver, 80 cents. The commodity tariffs did not at that time provide that either the class rate or the commodity rate might be used according as one or the other might make the lower total charge, but since January 18, 1909, this provision has been incorporated and is now a part of the tariffs. Previous to that time it had been the general custom of carriers to allow shippers to use whichever rate was the most advantageous.

The commodity rate with a minimum of 30,000 pounds would produce a less charge between the rivers than the class rate, but from the Missouri River to Denver the commodity rate and the class rate were the same although the minimums were different, and the complainant claims that it was unjust to exact under those circumstances a rate higher than the class rate. This the defendant concedes and has, as already stated, modified its tariff accordingly.

We find that at the time of this shipment the minimum applied to it from the Missouri River should not have exceeded 24,000 pounds and that the complainant is entitled to recover as reparation from the defendant, the Chicago, Rock Island & Pacific Railway Company, and the Denver & Rio Grande Railroad Company, who handled the shipment from the Missouri River to Denver, the difference between what the carriers collected under a minimum of 30,000 pounds and what they would have collected under a minimum of 24,000 pounds, or \$43.06, with interest.

As a justification for maintaining the higher minimum and the same rate the defendants state that the mixture of different articles at the carload rating under the higher minimum is more favorable than that allowed by the classification, but none of the additional articles which might be mixed under the higher minimum were embraced in this shipment.

17 I. C. C. Rep.

No. 2535.

E. I. DU PONT DE NEMOURS POWDER COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted December 8, 1909. Decided February 7, 1910.

Complainant is subjected to undue prejudice and disadvantage in the transportation of common black powder from Montchanin, Del., through Chadd's Ford Junction to points local to the Pennsylvania Railroad Company in Pennsylvania and to certain points in Ohio local to the Pennsylvania Company. For the future the rates from Montchanin to such points should not exceed the rates contemporaneously in effect from Philadelphia Rate Basis territory to the same points.

William A. Glasgow, jr., for complainant.

George Stuart Patterson for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and Pennsylvania Company.

Charles Heebner for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Montchanin, Del., where the plant now owned by complainant has been located for the last hundred years, is situated between Wilmington, Del., and Chadd's Ford Junction, Pa., 8 miles from the former and 7 miles from the latter, on the Wilmington branch of the Wilmington & Columbia division of the Philadelphia & Reading Railway, which runs from Wilmington to Reading, Pa., and was known as the Wilmington & Northern Railroad prior to its acquisition under lease by the Philadelphia & Reading.

Complainant is engaged at Montchanin in the manufacture, among other things, of common black powder which it ships from that point to various parts of the United States. The Philadelphia & Reading connects at Wilmington and at Chadd's Ford Junction with the Philadelphia, Baltimore & Washington Railroad, which is controlled by the Pennsylvania Railroad Company through ownership of a majority of its capital stock.

Complaint is made that defendants have refused or neglected to voluntarily establish through routes and joint rates, and that no reasonable or satisfactory through routes exist from Montchanin to various points in Pennsylvania, local to the Pennsylvania Railroad and in Ohio local to the Pennsylvania Company, the only rates applicable on the traffic being the local of the Philadelphia & Reading to Chadd's Ford Junction and the local of the Pennsylvania Railroad, or the joint rate of that road with the Pennsylvania Company, to points of destination. It is also charged that this combination is unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, and the prayer of the complaint is for the establishment of through routes and joint rates via the lines of defendants to the points mentioned.

Geographically Montchanin is within what is known for rate-making purposes as Philadelphia Rate Basis territory, from and to which rates are the same, and from which the rate on common black powder is first class in carloads, minimum weight 10,000 pounds, and double first class in less than carloads. Although Montchanin is within this territory the Philadelphia Basis is not applicable therefrom, the carload rate being the first class rate to Chadd's Ford Junction, the less than carload double first class, and the Philadelphia Basis beyond. In this respect the situation of Montchanin is unique; it is within the common-point territory, but is not accorded the common-point rate. There are in effect joint class rates from stations, including Montchanin, on the Philadelphia & Reading to stations on the Pennsylvania Railroad east of Chadd's Ford Junction and Wilmington to and including Philadelphia. There are also in effect joint class rates from Philadelphia Rate Basis territory and from Montchanin to western, northwestern, and southwestern points, which include some stations in Ohio local to the Pennsylvania Company.

The inbound material for the manufacture of black powder at Montchanin is delivered to complainant by the Philadelphia & Reading Railway. Besides its Montchanin plant, however, complainant has 40 or more mills located in various parts of the United States, several of which are local to the line of the Pennsylvania Railroad and to which that road transports the inbound material. The transportation of black powder is extremely hazardous, and when there is no inbound haul of material for its manufacture the defendants claim that it is not desirable traffic.

Complainant has nine competitors located at various points in Pennsylvania from which the Philadelphia Basis applies. Among complainant's plants are those at Ferndale, Krebs, Wapwallopin, Peckville, Penobscot, Moosic, and Laurel Run, Pa., from which the Philadelphia Basis applies, and one at Fairchance, Pa., from which a lower

rate is applicable to western Pennsylvania and Ohio points. The present rates from Montchanin have been in effect for some twenty years.

The position of defendants is that a reduction of these rates is not justified in view of the fact that they have not been shown to be unreasonable *per se* and have been maintained for a score of years, during which time the plant of complainant has steadily developed; that the volume of traffic in common black powder is light and the carload minimum low; that this explosive is the most dangerous which carriers undertake to transport, and that as compared with ordinary traffic additional switching and labor are necessary; that complainant has mills on the Pennsylvania Railroad from which rates as low as or lower than the Philadelphia Basis are in effect; that it has no competitor near Montchanin from whose plant the Philadelphia Basis is applicable, and, generally, that there is no commercial necessity for lower rates from Montchanin, particularly in view of the fact that the defendant, the Pennsylvania Railroad, does not participate in the transportation of the inbound material.

All this may be admitted without meeting the contention upon which this complaint is based, viz, that the higher rates imposed from Montchanin constitute an unjust discrimination against the shipper of powder from that point. It is true that none of the competing plants is in close proximity to Montchanin, but a number of them are located within the Philadelphia Rate Basis territory and get the benefit of the lower rates which apply from points in that territory other than Montchanin. Apparently, as against these plants, complainant is handicapped in reaching the territory in question to the extent of the local rates from Montchanin to Chadd's Ford Junction, and we are of opinion that this discrimination has not been justified. The defendant roads have physical connection and interchange traffic at Chadd's Ford Junction. Complainant's powder moves through this junction without transfer or rebilling in the cars in which it is loaded at Montchanin. If we correctly apprehend the facts disclosed in this case, the principal if not sole objection to giving Montchanin the Philadelphia rate is the fact that the Pennsylvania Railroad, which appears not to participate in the haul of inbound material to the Montchanin plant, regards the outbound shipments of manufactured product as undesirable traffic which it ought not therefore to be required to carry from the junction point where it is received at anything less than the full Philadelphia rate. In short, it objects to such reduction in its present revenue as would result from a division of the Philadelphia rate with the initial carrier. We are not prepared to sustain this objection. Montchanin's location, approximately half way between Wilmington and Chadd's Ford Junction, from both of which points the Philadelphia Basis applies, its situation within the territory from

which a common rate has long been applicable, and the general similarity of transportation conditions at Montchanin as compared with other points in Philadelphia territory, including those where powder shipments originate, constrain us to hold that Montchanin is entitled to the Philadelphia Basis, and that the higher rate from that point is an unjust discrimination against complainant. Beyond referring to what was said in *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C. Rep., 466, where the general subject is fully discussed, it seems unnecessary to enlarge upon the reasons for the conclusion reached in this case.

Upon all the facts and circumstances disclosed we are of the opinion that complainant is subjected to undue prejudice and disadvantage in the transportation of common black powder from Montchanin through Chadd's Ford Junction to points local to the Pennsylvania Railroad Company in Pennsylvania, and to certain points in Ohio local to the Pennsylvania Company; and that for the future the rates from Montchanin to such points should not exceed the rates contemporaneously in effect from Philadelphia Rate Basis territory to the same points.

No order will be entered at this time for the reason that many errors are apparent in the list, furnished by complainant, of points local to the Pennsylvania Railroad in Pennsylvania, and the Ohio points in question were not specified. The case will be held open for thirty days, during which time the defendants will be expected to publish rates in accordance with the conclusion above stated. If action to that end is not taken within the time mentioned, the case will be assigned for the submission of such further testimony as will enable the Commission to enter a specific order in conformity with this report.

17 I. C. C. Rep.

Nos. 2287, 2337, 2395, 2655, 2656, and 2694.

LARROWE MILLING COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted November 19, 1909. Decided February 7, 1910.

1. Reparation awarded on certain shipments of sugar-beet pulp from Janesville, Wis., to various destinations in the states of New York and Pennsylvania on the authority of *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 17 I. C. C. Rep., 443.
2. As beet pulp is the residue or by-product of the process of extracting sugar from beets, the restriction of a rate to the transportation of beet pulp when intended "for the manufacture of sugar" is irrelevant and mere surplusage, and is therefore held to be unreasonable because misleading.

Charles Staff for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

Charles B. Fernald for Pennsylvania Railroad Company, Pennsylvania Company, and Philadelphia, Baltimore & Washington Railroad Company.

Charles Heebner for Philadelphia & Reading Railway Company.

H. C. Martin for Grand Trunk Western Railway Company, and Grand Trunk Railway Company of Canada.

Charles McPherson, John C. Bills, and Howard Streeter for Pere Marquette Railroad Company.

E. C. Clifton for Lehigh Valley Railroad Company.

John J. Beattie for Lehigh & Hudson River Railway Company.

H. A. Taylor and H. Murray Andrews for Erie Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

These six petitions were filed by the same complainant, and all relate to shipments of sugar-beet pulp from Janesville, in the state of Wisconsin, to eastern destinations. The situation which they present involves the question of the applicability of a combination of

17 I. C. C. Rep.

rates on Waukesha, a point on the indirect line of the Chicago & North Western Railway to Chicago, whereas the shipments in some of the cases moved to the latter point, as appears from the records herein, over the direct and shorter line of that carrier. Similar shipments were made in the case of *Larrowe Milling Co. v. C. & N. W. Ry. Co.*, ante, p. 443, and the views there expressed by the Commission must necessarily control our action on these records. As in that case we also here hold that the rates properly applicable were the combinations made up of the proportional rate of 3 cents to Waukesha and the grain-products rate from that point to the respective destinations. A mere statement of the facts with respect to the different shipments is all that will be necessary therefore to enable us to dispose of the complaints:

Complaint No. 2287 embraces a shipment weighing 34,364 pounds, which, on January 16, 1906, was forwarded to Doylestown, in the state of Pennsylvania. Charges were collected in the amount of \$99.96, being at a combination rate of 29.09 cents per 100 pounds. We find that the combination lawfully applicable was made up of the 3-cent rate to Waukesha and a rate of 15½ cents beyond, thus entitling the complainant to a refund in the sum of \$36.39.

In the second of the above-entitled cases the shipment moved on December, 15, 1905, to Cortland, in the state of New York. A combination rate of 26.09 cents per 100 pounds was assessed on a weight of 30,300 pounds, collection being made in the amount of \$79.05. We find that the correct basis was the combination on Waukesha of 17½ cents, and that the complainant therefore has been overcharged to the extent of \$26.03.

In complaint No. 2655 the shipment weighed 30,250 pounds and moved to Mendenhall, in the state of Pennsylvania, on December 31, 1905. Charges were collected at destination in the sum of \$88, being at a combination rate of 29.09 cents per 100 pounds. With respect to this shipment we also find that the proper rate to have applied was the combination of 18½ cents based on Waukesha, and therefore a refund of \$32.04 should be made to the complainant.

Except as to one of the shipments involved in docket No. 2694, the three remaining complaints differ from the leading case and those just considered in that the various shipments moved during the effectiveness of a rule published by the Chicago & North Western line which restricted the application of the proportional rate of 3 cents to Waukesha to "beet pulp, C. L. (for the manufacture of sugar)," etc. The principal defendant offers no explanation of this restriction beyond the statement of its general attorney that it must have been incorporated in the tariff through error. It is stated by the complainant and admitted by that defendant that sugar-beet

pulp, as a merchantable commodity, is simply a by-product resulting from the manufacture of sugar from beets, and therefore the restriction in question is meaningless and without force. The Chicago & North Western was evidently in error in publishing the rule, and that the restriction was regarded as having no influence upon the rate is shown by the fact that in one of these cases it appears that the 3-cent proportional rate was charged and collected. In view of the nature of the commodity the restriction of the rate to the transportation of beet pulp when intended "for the manufacture of sugar" would, if strictly applied, amount virtually to a cancellation of the rate altogether, for as above explained beet pulp is what is left after the sugar has been extracted from the beets. We therefore hold that the restriction was irrelevant and mere surplusage and unreasonable because misleading; and we are fortified in this view by the fact that the tariff has since been amended so as to eliminate the restriction.

In docket No. 2395 is involved a shipment weighing 48,400 pounds, forwarded to Warwick, in the state of New York, on March 19, 1906. Charges seem to have been collected on the basis of the proportional rate of 3 cents to Waukesha and the class rate of 25 cents beyond. We find that the proper rate to have applied for the haul east of Waukesha was, under the published tariffs, the grain products rate of $17\frac{1}{2}$ cents. The complainant is therefore entitled to a refund of \$36.30.

The shipment covered by docket No. 2656 moved on March 23, 1906, to Eltonburg, in the state of Pennsylvania. It weighed 30,250 pounds, and the charges thereon were prepaid at a rate of 28.8 cents per 100 pounds. The combination on Waukesha yielded a through rate of $17\frac{1}{2}$ cents, and on this basis the complainant is entitled to a refund in the amount of \$34.18.

Complaint No. 2694 embraces three carloads of beet pulp shipped on February 23, 26, and January 2, 1906, to Bird-in-Hand, Mountville, and Windber, respectively, all in the state of Pennsylvania. On the shipment to Bird-in-Hand, weighing 35,332 pounds, there was collected \$69.61, equivalent to a rate of 19.73 cents per 100 pounds; on the shipment to Mountville \$59.60 was collected, based on a rate of 19.7 cents and a weight of 30,250 pounds; and on the shipment to Windber the carriers collected \$66.78, being at the rate of 18.9 cents on 35,332 pounds. We find that the correct combinations to have applied were $18\frac{1}{2}$, $18\frac{1}{2}$, and $17\frac{1}{2}$ cents per 100 pounds, respectively, and that the complainant is entitled to refunds on the respective shipments in the amounts of \$4.25, \$3.64, and \$4.95.

As to some of these shipments we have been unable to ascertain definitely on just what basis the combinations charged were made up, and therefore if there exist any undercharges or overcharges the

defendants should, in complying with our order, participate in the refunds according to the divisions to which each is lawfully entitled.

It may be well to state that although these complaints were not filed formally with the Commission until 1909, they were presented to the Commission by the complainant on January 7 and 9, 1908, within the two-year period from the date of the payment of the freight charges.

An order will be entered directing payment, with interest, of the amounts herein found to be due the complainant. As the record in case No. 2656 indicates that the Pere Marquette Railroad Company did not participate in the movement, that complaint will be dismissed with respect to that defendant.

17 I. C. C. Rep.

No. 1168.

**FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE
ASSOCIATION**

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

No. 2566.

SAME

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted February 4, 1910. Decided February 8, 1910.

1. Complainant's allegations in case No. 2566 do not properly notify defendants of the things complained of, and the Commission can not properly undertake to establish rates to the territory not embraced in case No. 1168. In some way the rates to be dealt with by the Commission must be definitely specified in the complaint. The thing found fault with should definitely appear.
2. The present proportionnal rates from Florida base points upon citrus fruits to territory north of the Ohio River, west of the Buffalo-Pittsburg line, and east of the Missouri River are unreasonable, and should not exceed the rates named in the report.
3. The present carload rates from Florida base points upon vegetables to Baltimore, Philadelphia, New York, and Boston are unreasonable, and should not exceed the rates named in the report.
4. While the Commission takes into account competitive conditions in passing upon the reasonableness of rate adjustments, it does not feel that, in the present instance, it can properly require defendants to maintain rates from Florida base points to Ohio River crossings upon vegetables of less than 30 cents per crate, and the Commission can not therefore condemn the advances. Carriers may sometimes do, as a matter of policy, what this Commission would not require.
5. Maximum rates for the transportation of pineapples and citrus fruits from points of production upon the Florida East Coast Railway to Jacksonville when destined for points beyond, in carload and less-than-carload quantities, prescribed.
6. Local rates from Florida base points may properly exceed the proportional rates established by 2 cents per crate in case of vegetables, 3 cents per box in case of citrus fruits and pineapples, and 4 cents per 100 pounds where the rate is named in that manner.
7. Mixture of fruits and vegetables from Florida points should be allowed in carloads, but the rate and minimum should be that of the article which takes the highest rate. This gives to the carrier the earnings which it should make upon an entire carload of that commodity, and permits the vegetables to be handled in the most economical manner.

8. Complaint in case No. 2566 makes no reference whatever to the subject of refrigeration; the Commission disposed of that question upon the complaint in case No. 1168, and complainant gave no notice of its intention to request the Commission to proceed further with that matter in that case. When the complainant upon the hearing endeavored to go into this subject of refrigeration charges, defendants objected on the ground of lack of notice and unpreparedness; *Held*, That the contention of defendants is sustained.

William A. Glasgow, jr., Charles D. Drayton, and A. A. Boggs for complainant.

S. F. Andrews, F. C. Dillard, W. D. Chase, E. G. Buckland, Ed. Baxter, W. A. Parker, G. J. Brister, M. F. Watts and A. St. Clair Abrams for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The Commission by its report of June 25, 1908, in No. 1168 (14 I. C. C. Rep., 476), considered at considerable length rates upon fruits and vegetables from producing points in Florida to eastern destinations north of the Potomac and Ohio rivers and east of the Missouri River. By that decision rates were established on citrus fruits and pineapples to eastern destinations north of the Potomac and east of the Buffalo-Pittsburg line, and existing rates to the Ohio River were approved. The Commission stated that in its opinion rates to points north of the Ohio and east of the Missouri rivers were excessive, but since the proper carriers were not before it no attempt was made to establish these rates at that time.

Existing carload rates on vegetables to the Ohio River were approved as were also existing any-quantity rates to eastern points north of the Potomac. The rail-and-water rate from points of production to North Atlantic ports was reduced in case of vegetables, and it was suggested that carload rates should be established to eastern territory.

The carriers complied with the order of the Commission in so far as rates were definitely fixed, but did not for the time being accept the suggestions which were made. No. 2566 has been brought for the purpose of obtaining the benefit of those suggestions and also asks the establishment of rates on fruits and vegetables from Florida base points to those portions of the United States not embraced in the previous proceeding. The first matter for consideration is whether upon this record we can deal with that territory not covered by the original complaint.

The complainant names as defendants 200 railroads, being the principal lines operating in all parts of the United States and Canada. The second paragraph in the complaint alleges that the defendants are engaged in interstate transportation between points in the state

of Florida and points in the states of New York, New Jersey, Delaware, Pennsylvania, Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, Vermont, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Oklahoma, Nebraska, Texas, Maryland, Virginia, West Virginia, Tennessee, Mississippi, Kentucky, Alabama, Louisiana, Arkansas, Georgia, North and South Carolina, Colorado, Washington, Oregon, and the District of Columbia, and Dominion of Canada. The third paragraph states that the various fruits and vegetables grown in Florida are shipped to the states named in Paragraph II, where they come into competition with similar fruits and vegetables grown in California, Mississippi, Alabama, Texas, Georgia, North and South Carolina, and other states, and Cuba, Porto Rico, Jamaica, and other countries; that the rates charged from Florida are unreasonable and unjust as compared with rates from these different sources of supply. Reading the whole complaint it may be fairly said that it contains an allegation that the rates of the defendants from Florida are not only relatively but absolutely unreasonable to different parts of the United States. Paragraphs V, VI, and VII contain a statement of the rates to certain-named points, some 50 or 60 in number, situated in different parts of the United States. There is no allegation in these paragraphs that the rates named are unreasonable, but the whole complaint taken together may perhaps amount to such an allegation.

Paragraph IV refers to rates on citrus fruits and pineapples to points north of the Ohio River, Paragraph VII refers to carload rates to eastern destinations north of the Potomac, Paragraph VIII to the mixing of fruits and vegetables, and Paragraph IX to the local rates from base points as compared with the proportional rates.

No. 1168 was retained for further proceedings and was set down for hearing at the same time with No. 2566. Upon the hearing it was agreed that the previous record in No. 1168 should be treated as a part of the record in No. 2566.

The defendants contend that upon the allegations in the complaint and the proofs given in evidence the Commission can not properly undertake to establish rates to the territory not embraced in No. 1168, and this contention is sustained. We do not hold that a complainant may not put in issue an entire schedule of rates, nor that rates upon a single commodity from a given point of origin to all parts of the United States may not be embraced in a single complaint. But in some way the rates to be dealt with by the Commission must be definitely specified in the complaint. The thing found fault with should definitely appear. It is not enough for these complainants to say: We ship fruits and vegetables to all parts of the United States and Canada; at various points we come into compe-

tition with similar fruits and vegetables raised in various localities in other states and countries; our rates are unreasonable and discriminative, and we ask that they may be readjusted. Such an allegation does not properly notify the defendants of the thing complained of; nor can this Commission intelligently examine the rates in issue. The present record contains nothing of importance in addition to the evidence originally given in No. 1168, except certain tables of rates, and while the Commission may have an impression as to the rates from Florida base points to various markets of consumption in the new territory involved in No. 2566, we have no jurisdiction to establish such rates and shall express no opinion whatever in reference to them.

Limiting the territory to which consideration may be given to that north of the Potomac and Ohio and east of the Mississippi and the Missouri, the following questions are presented:

I. What rates shall be established on citrus fruits and pineapples to territory north of the Ohio River, west of the Buffalo-Pittsburg line, and east of the Missouri River?

II. What carload rate shall be established upon vegetables from Florida base points to points north of the Potomac and east of Buffalo and Pittsburg?

III. Shall advances in vegetable rates from base points to the Ohio River be approved?

IV. In the original opinion the Commission held that rates upon citrus fruits and pineapples should be the same. It further held that rates from points of production upon the Florida East Coast Railway to Jacksonville, when for beyond, were reasonable. By its order of January 12, 1910, opening No. 1168 for further consideration, the reasonableness of these rates is before us for consideration. The occasion for that order was the earnest claim upon the part of the pineapple industry along the Florida East Coast that it could not exist under the present conditions. We have, therefore, the general situation as to rates on pineapples.

V. What shall be the local rate from Florida base points as compared with the proportional rate?

VI. What rule shall be established as to mixing fruits and vegetables in carloads?

VII. Shall any change be made in the present rates for refrigeration?

I.

In the former case the Commission considered the reasonableness of rates on citrus fruits and pineapples from base points to destinations north of the Ohio River and east of the Missouri, reaching the conclusion upon that record that those rates should be reduced.

Since the carriers operating north of the Ohio were not parties to that proceeding no final conclusion was reached and no order was made. In No. 2566, these roads are made parties and have been heard. Nothing offered by them changes the conclusion reached upon the former record. It was there held that carload rates from base points to the Ohio River might properly be the same as those to New York, the distance being substantially the same. There is no apparent reason why rates to points north of the Ohio River should much differ, distance considered, from those to various eastern destinations north of the Potomac.

We are of the opinion that the proportional rates from Florida base points upon citrus fruits and pineapples to the points named below, stated in the column headed "Present rates," are unreasonable, and that those rates, in cents per box, in carloads, minimum 300 boxes, ought not to exceed the rates named in the column marked "Future rates."

Point.	Present rates.	Future rates.
	<i>Cents.</i>	<i>Cents.</i>
Chicago.....	59.6	53
Indianapolis.....	56.0	50
Cleveland.....	58.8	51
Milwaukee.....	62.0	55
St. Louis.....	54.0	50
Columbus.....	56.0	50
Minneapolis.....	77.6	66
St. Paul.....	77.6	66
Kansas City, Mo.....	71.6	62
Omaha.....	79.6	68
Cedar Rapids.....	72.8	62

The present rates above condemned are joint rates published by the initial lines and concurred in by their connections.

The above destinations are the only points in this territory mentioned in the complaint in No. 2566. The whole situation was gone into in the former case and has been reviewed in this case. We have little doubt that under these circumstances, where the defendants are before us upon notice of the matter which will be examined into, where a full hearing is had and a conclusion reached, the Commission may, in its sound discretion, establish rates to points not referred to by name in the complaint. Out of abundant caution, however, we have concluded to embrace in our order only those cities in that territory which were specified in the complaint.

If carriers do not check in rates substantially in accord with the opinion here expressed, further proceedings will be had looking to an examination in detail as to the various destinations in this territory and the making of a comprehensive order.

II.

By the original opinion it was suggested that carload rates should be established on vegetables which should not exceed the following in cents per crate:

To—	Cents.	To—	Cents.
Baltimore.....	33	New York.....	36
Philadelphia.....	34	Boston.....	42

with corresponding rates to various interior destinations, the minimum to be 20,000 pounds or something less. The carriers have established carload rates which are 3 cents higher than those suggested, minimum 20,000 pounds.

The complainants earnestly urge that the rates suggested by the Commission are decidedly too high; that the New York rate ought not to exceed 30 cents, and they state that the minimum might properly be made 480 crates, or 24,000 pounds, thereby bringing the car earnings of the defendants up to those resulting from the rates established by the Commission on oranges.

While the testimony indicates that vegetables can be loaded in ventilator cars to 24,000 pounds, we hesitate to establish this minimum. Comparatively few growers of vegetables testified at the hearing. The minimum from southern points of production does not usually exceed 20,000 pounds. When shipped under refrigeration not over 350 crates, 17,500 pounds, can be properly loaded.

We are of the opinion that the carload rates of the defendants from Florida base points to eastern destinations now in effect, when from beyond are excessive, and that the following rates in cents per crate would be reasonable and ought not to be exceeded:

Under ventilation, minimum 480 crates, 24,000 pounds.

To—	Cents.	To—	Cents.
Baltimore.....	30	New York.....	33
Philadelphia.....	31	Boston.....	39

Under refrigeration, minimum 350 crates, 17,500 pounds.

To—	Cents.	To—	Cents.
Baltimore.....	36	New York.....	39
Philadelphia.....	37	Boston.....	45

Our order will only apply to Baltimore, Philadelphia, New York, and Boston, since those are the only points named in the complaint; but carriers will be relied upon to check in proper rates at interior destinations, as was done in case of carload rates on citrus fruits.

III.

When the original case was decided rates from base points to the Ohio River were and for many years had been 25 cents per crate, minimum 20,000 pounds. Rates to points north of the Ohio River were made by adding certain specifics to those rates up to the river. This system of rates and the rates themselves were approved by the Commission.

During the pendency of these proceedings, carriers advanced their rates from base points to the Ohio River to 30 cents per crate with the same minimum. Rates north of the Ohio River are constructed by the addition of the same specifics as before, so that the effect of this action is to work a general advance of 5 cents per crate to the Ohio River and to points north of the river. Complainants insist that this advance is unreasonable. Defendants urge that the Commission has found that the orange rate might properly be the same from base points to New York and the Ohio River; that there is no reason why the same rule should not be applied to vegetables, and that a rate of 30 cents to the Ohio River is still 6 cents lower than the rate suggested by the Commission to New York.

Vegetables from Florida come into competition at the Ohio River and at points reached through Ohio River gateways with those produced in other parts of the south, particularly southern Alabama and Mississippi. The distance from these latter points to the Ohio River crossings is less than from Florida, and the rates established are generally less than 25 cents per crate. That rate was made to meet these competitive conditions.

While the Commission takes into account competitive conditions in passing upon the reasonableness of rate adjustments, we do not feel that, in the present instance, we can properly require these carriers to maintain rates from Florida base points to Ohio River crossings, upon these vegetables, of less than 30 cents per crate, and we can not therefore condemn the advance. Carriers may sometimes do, as a matter of policy, what this Commission would not require.

In the past the cabbage rate from Florida base points to the Ohio River has been 42 cents, minimum 20,000 pounds. The new tariff leaves the old rate in effect but advances the minimum to 24,000 pounds. In view of the statement of the complainant that vegetables can be safely loaded to 24,000 pounds, no reason is apparent why this increase in minimum should be condemned upon this record.

The former rate on potatoes was 27 cents, minimum 37,000 pounds; the new rate is 32 cents, minimum 30,000 pounds. The complainants insist that this rate should be reduced to the former figure.

These potatoes are new potatoes, shipped in barrels, and the testimony shows that not over 30,000 pounds can be properly loaded. The necessities of the shipper, therefore, required the reduction in minimum, which, in our opinion, justifies in a measure the advance in the rate. The present earnings from a carload of potatoes is but \$96, which can not be regarded as excessive. This rate is therefore approved.

IV.

In the former case we established the same rate on pineapples as upon citrus fruits and approved the rates then in effect from points of production up to base points. The only rates attacked in No. 2566 are those from base points. The growers of pineapples along the Florida East Coast Railway have urged with great insistence that the rates upon that commodity must be reduced to save the industry itself from extinction, and so earnestly has this been pressed that the Commission decided to strike off its holding as to the reasonableness of these rates from points of production along that line to Jacksonville and to take the whole matter under advisement. An order was passed to that effect, the parties were so notified, and have been fully heard in proof and in argument.

The only pineapple production of considerable extent in the United States is in southern Florida, along the line of the Florida East Coast Railway. With the construction of this line farther south this industry has rapidly developed. Below are the figures showing the number of crates transported to market by the Florida East Coast Railway from 1905 to 1909, inclusive:

Year.	Crates.
1905	370,688
1906	574,035
1907	577,806
1908	640,829
1909	1,110,547

The principal competition which the Florida grower meets is from Cuba. Pineapples in Cuba are produced in close proximity to the city of Habana. The following table gives the importations into the United States from Cuba for the fiscal years 1905 to 1909, inclusive:

Year.	Crates.
1905	2,325,011
1906	2,302,180
1907	1,726,559
1908	2,322,304
1909	3,170,390

The cost of production in Cuba is less than in Florida. Land is less valuable, labor is cheaper, and no fertilizer is required. The testimony before us indicates that the difference in the cost of production is substantially 15 cents per crate of 80 pounds.

The Cuban pine is not equal in flavor to that grown in Florida and sells for somewhat less in the market. The advantage in favor of the Florida pine is said to be from 25 to 50 cents per crate, according to the market and the condition of the market, but against this is the fact that the Cuban pine comes into market about March 1, while the Florida pine is not shipped to any considerable extent until May 15. The market has therefore been satisfied, in a measure, before the Florida pine is ready for sale.

The testimony indicates that the cost of producing Florida pines is from 95 cents to \$1.05 per crate, f. o. b., not including interest on the investment. In the past the grower has received net from \$1.35 to \$1.75 per crate, f. o. b., which, since the production is from 150 to 250 crates per acre, has made the business extremely profitable.

In 1909 the average price received f. o. b. from all sales in southern Florida was said to be 76 cents per crate, and actual sales of the best fields showed a return of 95 cents, which was substantially less than the actual cost of production.

The pineapple is reproduced by setting out of slips and comes into bearing in about two years, continuing in bearing for some six years. In 1909 no new fields were planted in Florida and old fields were not generally renewed. It is insisted by the growers that from now on production will decrease and that the final extinction of the industry is inevitable under existing conditions.

The present duty on pineapples is 16 cents per crate. The former duty was 14 cents, and Florida growers earnestly urged upon Congress, when the recent tariff revision was under consideration, an increase of that duty. It was increased 2 cents and the growers were told, according to their testimony in this proceeding, that this would equalize the cost of production in the two countries, as it substantially does, and that if the rates of transportation were against them they must apply to this Commission.

The position of the growers is that such rates should be established as will permit them to market their product at a reasonable profit. No such test of the justness of a transportation charge can be admitted. The testimony before us shows that the average price received by these growers for the crop of 1909 was 25 cents less than the cost of production, not including interest on the investment. The average rate received by the Florida East Coast Railway for the transportation of those same pineapples from the point of production to Jacksonville was 24.6 cents. If this defendant had entirely do-

nated its transportation service the growers for the season 1909 would still have entirely lost the benefit of their investment.

The difficulty with the pineapple industry for the year 1909 was overproduction both in Cuba and in Florida, which is an incident to the cultivation of all crops like pineapples where the market is limited and the ability to produce is practically unlimited. The enormous profits realized by the Florida growers in the past have stimulated production to an unnatural and unhealthy extent. It is the duty of these railroads to establish reasonable transportation charges and in so doing competitive conditions must be considered, but it is not their duty to make good to the producer the result of his own folly or misfortune.

While, however, no reduction in the rates of transportation from Florida would be of much permanent benefit to these growers so long as there was a corresponding reduction from Cuba, it is of vital importance to them in the struggle for existence that the relation between rates from these two fields of production should be fairly adjusted and it may very well be that upon such fair adjustment in a large measure depends the future of the industry in Florida, and this fact should be kept in mind by the carriers in establishing their rates from these two fields of production and by this Commission in revising those rates.

In establishing rates from Cuba in comparison with those from Florida, the carriers from Cuba have apparently insisted that the duty should be counted as a part of the transportation charge. This is wrong. Congress has determined the amount of protection which shall be accorded the American industry, and the carriers should not wipe this out by their rates of transportation. While some slight advantage may be gained by the carrier of the foreign traffic, this is more than offset by the manifest wrong which results, and the irritation which is engendered. In the long run it is better for all railroads to rest content with a fair adjustment of rates. In this case these rates should be considered purely from a transportation standpoint.

We turn, then, to the conditions which surround the transportation of these pineapples from Florida and Cuba. The Cuban pines are produced within a radius of 53 miles of the city of Habana, and while the testimony is not altogether satisfactory, it seems probable that the cost of transporting them to the docks and performing whatever labor is performed on the docks is about 7 cents per crate. In this is not included the expense of hauling the pines to the railway; we assume that the Cuban pine, when ready for shipment upon the dock, has cost the grower for transportation 7 cents per crate as compared with the American pine loaded into the car for shipment in Florida.

From the dock the Cuban pine is transported by water to the Gulf ports, like Galveston, New Orleans, and Mobile, and to the various Atlantic ports. The Florida pine is produced, on the average, about 275 miles south of Jacksonville and is carried by rail this distance to Jacksonville before it reaches the water. From Jacksonville it may go by boat to various destinations. The distance to the Atlantic ports is somewhat less than from Habana, but the actual cost of carriage is not much different.

It seems evident, therefore, that the Florida pineapple can not expect as favorable a rate to the various seaports of this country as is accorded to the Cuban product. This advantage in the cost of transportation to the great markets thus reached is an advantage in favor of the Cuban pine akin to cheaper cost of production which might perhaps properly be offset by a protective duty. Clearly, this Commission can not compel these carriers to reduce their rates to meet the lower and cheaper water charges from Cuba.

In case of interior territory, of which Chicago may be taken as representative, the case is somewhat different. Pineapples from Cuba may reach Chicago through New York, Mobile, New Orleans, or Knight's Key. The distance from New York is about 900 miles; from New Orleans a trifle greater, and from Mobile a trifle less. The distance from the average producing point in Florida is about 1,400 miles. Considering the manner of the transportation and the transfers which must be made it seems to us that the rate from the station in Cuba to Chicago ought to be as high as the rate from the station in Florida.

We have seen that the approximate cost of handling these pineapples from the country to the dock in Cuba, including what is done upon the dock, is approximately 7 cents per crate. The rate from the dock to Chicago via the line of the Florida East Coast Railway and its connections, that being the only line which now publishes a through rate, is 66½ cents, and it was said that, while no through rates were published, the same rate was in fact maintained by all routes.

The rate on pineapples from New York to Chicago is 40 cents per crate; that from Mobile and New Orleans 46 cents per crate. It was said that the water rate from Habana to New York, including 3 cents lighterage in the harbor of Habana, was 26½ cents, to Mobile and New Orleans 20½ cents, thus producing in every case a rate of 66½ cents. While these rates from New York and from the Gulf ports to Chicago are low for the distance, still, considering the nature of the lines over which this traffic moves and the competitive conditions under which it moves, these rates can not be regarded as in anywise abnormal. Neither, probably, although the Commission has little knowledge of water rates, can the rates in effect from Habana to the ports be

considered unusually low. The testimony indicates that they are as high as can be maintained in view of the competition between the regular line steamers and tramp vessels. On the whole, therefore, it seems probable that 66½ cents from the dock in Habana to Chicago is a fair competitive rate.

We have held in the preceding paragraph that the rate from Florida base points, including Jacksonville, to Chicago ought not to exceed 53 cents per crate. The Florida East Coast Railway introduced a statement showing by stations all shipments of pineapples to Jacksonville, together with the revenue derived therefrom, from which it appears that the average revenue per box up to Jacksonville had been 24.6 cents. The cultivation of pineapples seems to be moving south, and it is probably not far wrong to say that at the present time the average rate up to the base point is 25 cents per crate, which, added to the rate just established from Jacksonville to Chicago, would equal 78 cents. If we add to the Habana rate 7 cents per crate for the cost of transportation up to the dock we should have 73½ cents, which is still 4½ cents below the Florida rate. Can the rate from Florida with propriety be further reduced?

(The growers of pineapples suggest that we might properly establish a lower rate on pineapples than upon oranges. All the incidents of the transportation are the same; the value of the two commodities is practically the same. The only reason put forward for a lower rate upon pineapples is that the condition of the industry demands it; but testimony already taken in this case shows that in the past the condition of the orange industry in Florida has been and now is critical, and if we were to adopt the theory urged upon us by the growers of pineapples it is almost certain that we should be met by the same argument, with equal force, in case of other citrus fruits and vegetables in Florida and elsewhere. We repeat that the freight rate can not be established upon that basis.)

Can we, then, reduce these rates upon the Florida East Coast Railway from the point of production to Jacksonville?

In its former opinion in this case the Commission used, with respect to these rates from points of production to the base point, the following language:

From an examination of the elaborate figures which were introduced upon the trial showing the character of the traffic handled by these Florida roads, the conditions under which it is handled, their earnings, and the cost of operation through a series of years, it is difficult to see how these railroads can be expected to transport in a suitable way this fruit and vegetable traffic from points of production to these basing points for a less sum than they now receive. It is difficult to see how, even upon the present tariff, those lines can in the immediate future expect to pay any considerable return upon their investment. We feel that these local rates, although they are high in comparison with other local rates, are as low as should be established under all the circumstances.

The evidence produced upon the present hearing suggests no change in what was said so far as that applies to the Florida East Coast Railway. That line operates at the present time 477 miles of main line and 106 miles of branches. It has a first mortgage of \$10,000,000, a second mortgage of \$20,000,000, and a capital stock of \$3,000,000, making in all \$33,000,000. This capitalization, with the exception of about \$4,000,000, represents an actual cash investment.

It is urged by the complainant that the portion of the line from Miami south, which has cost some \$14,000,000, was not at the present time a paying investment and that the balance of the line from Jacksonville to Miami, which is used by the growers of pineapples, ought not to be taxed with the cost of this construction. Admitting this to be so and laying out of view altogether the \$14,000,000 which have been invested in that part of the property, it is still true that during the entire existence of the Florida East Coast Railway, so far as this record shows, that property has never earned in any single year 6 per cent upon the money invested, with the single exception of the year 1909. During much of the time its net earnings have been but little above its operating expenses. We certainly can not hold that these rates should be reduced because for a single twelve months, under what may be termed abnormal conditions, this railway earned about 6 per cent on the money which has been actually invested in its construction. The years when no return has been received must certainly be given some consideration. Upon no other theory could private capital be induced to invest in the construction of railroads.

While, however, we adhere to what was said in the previous case, we do think, upon more careful examination, that these rates of the Florida East Coast Railway on pineapples ought to be somewhat revised. They are not consistent with one another, and in our opinion those from the more distant points are too high as compared with rates from nearby points.

The present rates are in any quantity. About 60 per cent of these pineapples move from the point of origin in carloads, 40 per cent in less than carloads. Carload shipments are stripped and loaded by the shipper and are not unloaded at Jacksonville, which probably saves the carrier not far from 2 cents per box. The less-than-carload shipment is loaded by the railway and usually unloaded at the station in South Jacksonville or Jacksonville. In our opinion carload rates should be established which are less than the present any-quantity rates by 3 cents per box.

The establishment of such carload rates will not of a certainty work a decrease in the net earnings of the carriers. It is a false theory of transportation which seeks to force the shipper to avail himself of a less-than-carload service, which is more expensive to

render, for the purpose of increasing the gross revenues of the carrier. The true object should be to perform the service in the most economical manner and to charge for that service reasonable compensation. In the end this makes to the advantage of both the carrier and its patron. The vice-president of the Florida East Coast Railway stated that he had always thought that carload rates should be established and that in his opinion to establish carload rates 3 cents per box less than the present any-quantity rates would not prejudice the net revenues of his company, since he would make up by saving in operating expenses what he lost in gross income.

In our opinion the following rates, in cents, per standard crate of 80 pounds ought not to be exceeded for the transportation of pineapples and citrus fruits from points of production upon the Florida East Coast Railway to Jacksonville when for beyond—minimum carload, 300 crates.

Distance (miles).	Rate.	
	Carload.	Less than carload.
	Cents.	Cents.
Up to 40.....	9	12
Over 40 and up to 60.....	10	13
Over 60 and up to 80.....	11	14
Over 80 and up to 100.....	12	15
Over 100 and up to 120.....	13	16
Over 120 and up to 140.....	14	17
Over 140 and up to 160.....	15	18
Over 160 and up to 180.....	16	19
Over 180 and up to 200.....	17	20
Over 200 and up to 220.....	18	21
Over 220 and up to 240.....	19	22
Over 240 and up to 260.....	20	23
Over 260 and up to 280.....	21	24
Over 280 and up to 300.....	22	25
Over 300 and up to 325.....	23	26
Over 325 and up to 350.....	24	27
Over 350 and up to 375.....	25	28
Over 375 and up to 400.....	26	29

The establishment of the above rates will reduce the average cost of transporting pineapples in carloads to Jacksonville to about 21 cents, and will produce a through rate from the point of production in Florida to Chicago of 74 cents, as compared with a through rate of about 73½ cents from the point of production in Cuba.

It has been seen that the Florida East Coast Railway, in connection with other lines north of Jacksonville and with its own steamboat line from Habana to Knight's Key, maintains a rate of 66½ cents from Habana to Chicago. It further appears that the Florida East Coast Railway and its connections north of Jacksonville receive out of this through rate an amount which is less than they charge for the transportation of Florida pineapples from points of production in Florida, although the distance is greater and the service practically the same. The complainant urges that these rail lines ought

not certainly to charge it more from the nearer point than they charge the Cuban pineapple from Knight's Key.

As we have already noted, the rate from Habana to Chicago makes through various ports and is highly competitive. The Florida East Coast Railway has engaged in this traffic for but two seasons, in 1905 and again in 1909. In 1909, out of a total importation of over 3,000,000 crates, it carried but about 80,000, and is therefore an insignificant factor in the situation. The testimony shows that its influence upon the Habana rate is rather in the direction of raising and maintaining than of lowering that charge.

It has been often held by the courts and by this Commission that a forced rate of this character can not be taken as the standard by which to measure the reasonableness of a rate upon local business. While it may perhaps be foolish for the Florida East Coast Railway to keep this situation a perpetual irritant to its own shippers when the profit derived is comparatively insignificant, nevertheless the maintenance of that rate can not be regarded as unlawful, and very likely, in this case, benefits somewhat the railway and therefore, indirectly, the shippers along its line. These growers of Florida pineapples would be in no way helped if the Florida East Coast Railway were to withdraw entirely from the Cuban business.

V.

The rates established by us from Florida base points are proportional rates applicable to traffic originating beyond, which has already paid up to the base point a rate approved by this Commission as part of the through rate. To some limited extent vegetables are produced in the vicinity of these base points and are therefore shipped locally from the base points. Dealers at the base points, particularly Jacksonville, also desire to ship fruits and vegetables to the base points at the any-quantity rate and there consolidate into carloads at the carload rate. In either case the expense to the carrier is greater in case of the local shipment than when the carload simply passes through the base point, and a somewhat higher rate may properly be applied. In our opinion local rates from base points may properly exceed the proportional rates established by 2 cents per crate in case of vegetables, 3 cents per box in case of citrus fruits and pineapples, and 4 cents per 100 pounds where the rate is named in that manner.

VI.

The complainants ask that rules be established which will permit the mixing of fruits and vegetables in carloads at the carload rate.

At the present time citrus fruits and pineapples can be mixed, the combined carload taking the same rate and minimum as would either commodity. Vegetables can be mixed, the rate applicable to the entire carload being that of the article which takes the highest rate and the minimum that of the article which takes the highest minimum.

There is not much occasion for the mixing of citrus fruits with vegetables, since the shipping season is different, but it sometimes happens that at the end of one season and the beginning of another such a privilege could be taken advantage of with benefit to the shipper. On the whole, it is our opinion that the mixture of fruits and vegetables from Florida points should be allowed, both the rate and the minimum to be that of the article which takes the highest rate. This gives to the carrier the earnings which it would make upon an entire carload of that commodity. These vegetables should be handled in the most economical manner, and whenever the shipper can combine a carload we feel that there is no hardship in requiring the carrier to handle this combined carload at a carload rate, applicable to the highest rated article in the car. This must not, however, be taken as a conclusion applicable to all commodities.

VII.

In the past rates from Florida points have been, as a rule, in any quantity and charges for refrigeration have usually been by the package, with a minimum of a given number of packages per car. It was stated in the original opinion that if carload rates were established for the transportation of fruits and vegetables the refrigeration charge should also be made by the car, and a rate for refrigeration of \$67.50 per car was approved.

This rate was from the point of production. The distance from these points is considerably greater than from base points, and the testimony shows that the cost of obtaining the ice at these points is greater than at the base points, it being often necessary to transport it from the base point to the point of icing. For this reason the refrigeration charge from the base point should properly be less than from the point of production.

It was also pointed out to the Commission upon the last hearing that during the winter season these cars required no icing north of certain points, and that this also decreased the expense to the carrier, which is evidently true.

The complaint in No. 2566 makes no reference whatever to the subject of refrigeration. The Commission had finally disposed of that question upon the complaint in No. 1168, and the complainant

had given no notice of its intention to request the Commission to proceed further with that matter in that case. When the complainant upon the hearing endeavored to go into this subject of refrigeration charges, the defendants earnestly objected that they had received no intimation that this matter would be considered and were entirely unprepared to meet that issue. We hold that the position of the defendants in this respect is well taken.

An order in accordance with the views above expressed in paragraphs I, II, V, and VI should be made in No. 2566, and with respect to paragraph IV, covering rates on pineapples and citrus fruits from points on the Florida East Coast Railway, in No. 1168.

17 I. C. C. Rep.

No. 1777.

JOHN A. BLANKENSHIP ET AL.

v.

BIG SANDY & CUMBERLAND RAILROAD COMPANY ET AL.

Submitted November 17, 1909. Decided February 8, 1910.

Local and proportional interstate rates established as to merchandise and certain specific commodities upon the lines of the principal defendant.

L. P. Loving, John B. Daish, and Campbell, Brown & Davis for complainants and for *Huff & Matney, Huff & Justice, E. L. Dotson, and Riley Lester*, interveners.

James L. Hamill, Vinson & Thompson, and J. J. Devine for Big Sandy & Cumberland Railroad Company.

Joseph I. Doran, John H. Holt, Ed. Baxter, and R. Walton Moore for Norfolk & Western Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The Big Sandy & Cumberland Railroad, although but 17 miles long, is an interstate carrier and subject to the jurisdiction of this Commission. Beginning at Devon, W. Va., on the Norfolk & Western Railway, it follows the line of Knox Creek in its meanderings to Blackey, Va., passing out of West Virginia into Kentucky and thence into Virginia. For 2½ miles from Devon the Big Sandy & Cumberland is a standard-gauge road, but from there on it is narrow gauge. Originally it was built as a logging road, but along its line a number of settlements have been established, on behalf of which this complaint is presented. Its tributary country, which is rough and mountainous, now contains approximately 3,000 people all of whom are directly engaged in, or dependent upon, the lumber industry. The road hauls lumber out and merchandise in. Its grades run from 1 to 5 per cent; it has a maximum curvature of 45 per cent, and Shay locomotives are used exclusively because this type of equipment alone is regarded as practicable upon such grades and curves. This railroad is an adjunct to the W. M. Ritter Lumber Company which owns practically all its stock, and which until recently operated the road itself. The Ritter Lumber Company now leases the road to the Big Sandy & Cumberland Railroad Company at an annual rental of \$8,000. Its annual statement for 1908 shows that it received total freight earnings of \$43,627.84; mail earnings, \$589.24; excess baggage, \$0.60; and passenger earnings of \$4,493.31; total

earnings, \$48,710.99. Its operating expenses are given as \$28,513.72, leaving a balance of \$20,197.27 out of which it paid \$995.66 for taxes, an arbitrary charge for depreciation of \$5,710.43, and rental of \$7,999.96, still leaving net earnings of \$5,491.22. In other words, after meeting all operating expenses, including maintenance of way and structures, maintenance of equipment, general expenses, and conducting transportation, there remained a balance out of gross earnings of \$20,197.27; and if we still further deduct from this amount the annual rental and taxes there remains to the operating corporation nearly \$12,000.

In addition to its function as a lumber company and railroad owner the Ritter Lumber Company conducts a number of company stores which compete with the establishments of independent proprietors who have intervened in this proceeding.

The petition prays:

(1) That the merchandise rates charged by the defendant be reduced to a reasonable figure;

(2) That the rates on malt and alcoholic liquors be reduced;

(3) That the rates on explosives be reduced;

(4) That the demurrage rate of \$2 per day per car be reduced to \$1 per day; and

(5) That the two carriers defendant be required to make joint rates and through routes.

The present tariff of the Big Sandy & Cumberland Railroad Company filed with this Commission, and effective May 17, 1909, is an extremely simple affair, making no classification of freight whatever but fixing the following rates in cents per 100 pounds on all merchandise:

TABLE NO. 1.—*Rates in cents per 100 pounds on all freight, except as provided for in this tariff under "Commodity rates."*

Between—	Devon, W. Va.		Lower Elk, Ky.		Woodman, Ky. ^a		Hurricane, Ky. ^a		Middle Elk Sta., Ky.		Camp Creek, Ky. ^a		Paw Paw, Va. ^a		Guinness Fork, Va. ^a		Hurley, Va.		Blackey, Va.	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Devon, W. Va.	15	25	15	25	15	25	15	25	20	35	25	45	25	45	25	45	25	45	30	55
Lower Elk, Ky.	15	25	15	25	15	25	15	25	15	25	20	35	25	45	25	45	25	45	25	45
Woodman, Ky. ^a	15	25	15	25	15	25	15	25	15	25	20	35	25	45	25	45	25	45	25	45
Hurricane, Ky. ^a	15	25	15	25	15	25	15	25	15	25	20	35	25	45	25	45	25	45	25	45
Middle Elk Sta., Ky. ^a	20	35	15	25	15	25	15	25	.....	.....	15	25	15	25	20	35	20	35	25	45
Camp Creek, Ky. ^a	25	45	20	35	20	35	20	35	15	25	.....	.....	15	25	20	35	20	35	25	45
Paw Paw, Va. ^a	25	45	20	35	20	35	20	35	15	25	15	25	.....	.....	15	25	15	25	20	35
Guinness Fork, Va. ^a	25	45	25	45	25	45	20	35	20	35	20	35	15	25	.....	.....	15	25	15	25
Hurley, Va.	25	45	25	45	25	45	20	35	20	35	20	35	15	25	15	25	15	25	15	25
Blackey, Va.	30	55	25	45	25	45	25	45	25	45	25	45	20	35	15	25	15	25	.....	.....

^a No agent. All charges must be prepaid. (See Rule 16.)

Rule 16. Shipments for nonagency stations. All shipments destined to nonagency stations are accepted and will be unloaded at destination at owner's risk.

The distances as furnished by the principal defendant between these stations are as follows:

	Miles.
From Devon, W. Va., to—	
Lower Elk, Ky.....	2.5
Hurricane, Ky.....	4.4
Middle Elk, Ky.....	5.6
Paw Paw, Va.....	10.2
Guesses Fork, Va.....	12.2
Hurley, Va.....	13.4
Blackey, Va.....	17.0
From Lower Elk, Ky., to—	
Paw Paw, Va.....	7.7
Guesses Fork, Va.....	9.8
Hurley, Va.....	10.9
Blackey, Va.....	14.5
From Hurricane, Ky., to—	
Paw Paw, Va.....	5.8
Guesses Fork, Va.....	7.9
Hurley, Va.....	9.0
Blackey, Va.....	12.6
From Middle Elk, Ky., to—	
Guesses Fork, Va.....	6.7
Hurley, Va.....	7.8
Blackey, Va.....	11.4
Paw Paw, Va.....	4.6
From Paw Paw, Va., to—	
Guesses Fork, Va.....	2.1
Hurley, Va.....	3.2
Blackey, Va.....	6.8
From Guesses Fork, Va., to—	
Hurley, Va.....	1.1
Blackey, Va.....	4.7
From Hurley, Va., to Blackey, Va.....	3.6

In addition to these merchandise rates there are certain class rates which cover a limited number of articles such as alcoholic liquors, coal, explosives, forest products, ice, logs, and lumber. The only article included in Class A is liquor, alcoholic and malt of every description, in packages, the rate on which is, from Devon to Blackey, 60 cents per 100 pounds in carloads, and \$1.10 per 100 pounds in less than carloads. The only article classified under Class C is explosives, all kinds, in packages, the rate on which is the same—60 cents in carloads and \$1.10 in less than carloads.

Accepting the primitive classification of freight made by the road, we find that the rates at present charged upon merchandise over this road are excessive and unreasonable, and that the same should not exceed, for a distance of 10 miles and under—

	Cents.
Per 100 pounds, L. C. L.....	20
Per 100 pounds, C. L.....	15
and for distances over 10 miles—	
Per 100 pounds, L. C. L.....	25
Per 100 pounds, C. L.....	20
17 I. C. C. Rep.	

The minimum fixed by the tariff on carloads is 5,000 pounds of merchandise, and the minimum charge applicable upon any one shipment should be the minimum upon 100 pounds as above given. The demurrage rate upon cars detained over forty-eight hours in loading or unloading should be fixed at \$1 per car, and the rate on malt and alcoholic liquors should be one and one-half times the merchandise rate, and on explosives, any quantity, one and one-half times the merchandise rate.

The circumstances of the case do not justify the establishment of joint rates with the Norfolk & Western road, but we think the law requires that a through route should be formed between the two defendants (see the act to regulate commerce, sec. 1) to the end that traffic may move freely from the one road to the other without the necessity of rebilling at the junction point or rehandling by the shipper. The local interstate rates herein established may be published and used by the Big Sandy road as proportionals; that is, separately established rates applicable on through business under section 6 of the act.

An order will be entered in conformity with these findings.

17 I. C. C. Rep.

No. 2349.
HENDERSON ELEVATOR COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

No. 2350.
A. WALLER & COMPANY
v.
SAME.

Submitted July 1, 1909. Decided February 14, 1910.

During a part of 1906 defendant, by provisions in its tariffs, applied to the transportation from Omaha, Nebr., and Council Bluffs, Iowa, to Cairo and other Ohio River crossings of grain placed in elevators at the latter points and reshipped thence to southeastern destinations proportional rates less than the local rates paid from said points of origin to said destinations, but no such transit privilege was allowed at Henderson, Ky.; *Held*, That failure to allow the proportional rate and transit privilege at Henderson unlawfully discriminated against complainants' business at that point. Reparation awarded.

C. M. Bullitt and *A. Waller* for complainants.
Sidney F. Andrews and *Ed. Baxter* for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Both of the above entitled proceedings ask reparation on account of alleged unjust discrimination in respect of the proportional rates in force during a part of the year 1906 for the transportation of corn and oats in carloads from Omaha, Nebr., and Council Bluffs, Iowa, through Henderson, Ky., to points in the southeast, and may be disposed of in one report. Both cases are submitted for determination upon complaint and answer, and certain documentary evidence. In each case the defendant admits in substance the allegations of the complaint and indicates its willingness to submit to an order for reparation.

Complainants in both cases are corporations engaged in the grain business at Henderson, Ky. Although these formal complaints were not filed until April 13, 1909, both complaints were presented to the Commission informally in November, 1907, and were finally placed upon the formal docket because the facts were not such as would warrant a reparation order under our rules governing the disposition of cases on the informal docket.

In case No. 2349 it appears that during July, September, and October, 1906, complainant shipped from Omaha and Council Bluffs to Henderson 11 carloads of corn, amounting to 870,400 pounds, and that upon 3 of said cars a rate of 13 cents per 100 pounds, and upon 8 of said cars a rate of 11½ cents, was applied, resulting in aggregate freight charges of \$725.53. All of the corn was later reconsigned from Henderson to points in the southeast via defendant's line. During April, May, June, July, September, and October, 1906, complainant in case No. 2350 likewise shipped from Omaha and Council Bluffs to Henderson 56 cars of corn and 7 cars of oats, aggregating 4,374,400 pounds. Upon 37 of these cars a rate of 13 cents, and upon 26 cars a rate of 11½ cents, was applied, resulting in aggregate freight charges of \$5,433.84. All the corn and oats was reshipped from Henderson via defendant's line to southeastern destinations.

The rates lawfully applicable to the traffic here in question from Omaha and Council Bluffs to Henderson proper were 13 cents prior to July 5, 1906, and 11½ cents subsequent to that date. Proportional rates of 9 cents and 7½ cents were in effect during corresponding periods on grain carried from Omaha and Council Bluffs to Henderson and Evansville when consigned through from origin to final destination in the southeast. Defendant states that it was its intention to have the proportional rates made applicable to both Henderson and Evansville on grain delivered to elevators at those points and reshipped to the southeast, but through negligence the reshipping tariff providing for such application of the proportional rates (I. C. C. No. A-5949) was not filed until February 2, 1907. At the time these shipments moved transit privileges similar to those subsequently permitted at Henderson were in force at other Ohio River crossings reached by defendant, and from the record it appears that the proportional rates from Omaha and Council Bluffs to Cairo on grain handled through the latter point were the same as the rates subsequently made to apply on grain reshipped from Henderson.

Complainants allege that defendant's failure to permit reshipment at Henderson, during the period covered by the complaint, under the same conditions that applied at other Ohio River crossings, unlawfully discriminated against their business at that point and that they thereby suffered damage, as compared with shippers engaged in similar business at other Ohio River crossings, to the extent of 4 cents

per 100 pounds upon the shipments here in question. These allegations are admitted by defendant.

Upon all the facts disclosed by the record we find that defendant's failure to place Henderson upon the same basis as other Ohio River crossings in respect of the reshipment through that point of grain from Omaha and Council Bluffs to southeastern destinations unduly discriminated against complainants, and that as a result thereof they were damaged to the extent of 4 cents per 100 pounds in connection with the shipments mentioned in these complaints. An order will accordingly be entered awarding reparation to the Henderson Elevator Company, complainant in No. 2349, in the sum of \$348.16, with interest, and to A. Waller & Company, complainant in No. 2350, in the sum of \$1,740.93, with interest; and requiring defendant, for two years, to maintain at Henderson reshipping privileges in respect of grain transported from Omaha and Council Bluffs through Henderson to southeastern territory as favorable as are maintained at other Ohio River crossings reached by defendant.

17 I. C. C. Rep.

No. 2561.
E. CLEMENS HORST COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL

Submitted December 2, 1909. Decided February 8, 1910.

Reparation denied on claim that the through rate on barley from Port Costa, Cal., to Milwaukee, Wis., had not been applied on shipments made to Sacramento and there rebilled to Milwaukee.

Hiram W. Johnson for complainant.

Wm. F. Herrin and *C. W. Durbrow* for defendants.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

In November, 1907, complainant shipped from Port Costa, Cal., to Sacramento, Cal., three carloads of barley, weighing in the aggregate 159,900 pounds. It was the intention of complainant, if the barley met certain requirements on inspection and sampling at Sacramento, to forward it to Milwaukee, Wis. The shipments were consigned to complainant's representative at Sacramento, who sampled them. None of the barley was removed, and the cars were forwarded within four days from the date they reached Sacramento. The through rate from Port Costa to Milwaukee was 50 cents per 100 pounds. There were paid by complainant the local rate from Port Costa to Sacramento of 7 cents per 100 pounds, and the rate from Sacramento to Milwaukee of 50 cents per 100 pounds. Reparation is asked in the sum of \$311.93, which represents the amount paid above the through rate from Port Costa to Milwaukee.

The local charge from Port Costa to Sacramento was paid by complainant to the local agent of the Southern Pacific at San Francisco subsequent to the shipment from Sacramento.

No order of diversion from Sacramento to Milwaukee was given the Southern Pacific, but through a misunderstanding of complainant's representative at Sacramento new bills of lading were issued. It was the custom of complainant to divert shipments of barley at

the San Francisco office of the Southern Pacific by surrendering the bills of lading and securing new ones covering the shipments to the new destination.

At the time the shipment moved the Southern Pacific had no provision in its tariff permitting the diversion of grain in transit through Sacramento. It appears that such diversion was permitted without publication. Such a provision is now effective, having been published January 1, 1909.

Under this state of facts we do not feel warranted in awarding reparation. Not only was there no tariff provision covering the privilege, but it is admitted by complainant that the shipments were billed locally from Port Costa to Sacramento and were rebilled from there to Milwaukee at the established rates, neither of which is alleged to be unreasonable.

The complaint will be dismissed.

No. 2198.

HINTON FRUIT & PRODUCE COMPANY

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL

Submitted November 17, 1909. Decided February 17, 1910.

A rate of 32½ cents per 100 pounds charged on carload shipments of potatoes from east Virginia points to Hinton, W. Va., found to be unjust and unduly discriminatory in view of rate of 26 cents on shipments of potatoes from same points through Hinton to Charleston, W. Va., 97 miles beyond, and to Huntington, W. Va., 147 miles beyond. Reparation awarded.

Thomas N. Read for complainants.

Herbert Fitzpatrick for Chesapeake & Ohio Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complainants are located at Hinton, W. Va., and state that they are dealers in and shippers of potatoes from east Virginia points to Hinton, W. Va., and that their competitors at Huntington and Charleston, W. Va., are engaged in the same business and are given by the defendants a rate of 26 cents per 100 pounds from said points to both Charleston and Huntington, while the defendants charge the complainants 32½ cents per 100 pounds for shipments to Hinton, an intermediate point, and thus subject the complainants and Hinton to unjust discrimination and undue and unreasonable prejudice and disadvantage, and give to their competitors an undue and unreasonable preference and advantage. Reparation is asked.

The defendants claim that competition at Charleston and Huntington justifies a higher rate to Hinton than to Charleston and Huntington. The facts in the case are found to be as follows:

In August, September, and October, 1908, the complainants shipped over the lines of the defendants to themselves at Hinton from said Virginia points, via Port Norfolk, Va., 978 barrels of potatoes, weighing 154,900 pounds, and were charged and paid 32½ cents per 100 pounds, amounting to \$505.52. The defendant, the New York, Philadelphia & Norfolk Railroad Company, in connection with the

Pennsylvania, Baltimore & Ohio, and Kanawha & Michigan railroads, has a joint through freight rate of 26 cents per 100 pounds on potatoes from the said Virginia points to Charleston and Huntington, W. Va., via Pittsburg, Pa., an average haul of about 832 miles. The defendants are granting to the competitors of complainants at Charleston, 97 miles west of Hinton, and at Huntington, 147 miles west of Hinton, a through joint rate of 26 cents per 100 pounds, and haul the commodity through Hinton westward to said points. There is no competition at Charleston and at Huntington over the long and circuitous route by way of Pittsburg that will justify the rate of 32½ cents to Hinton, and the charges on the shipments of complainants in excess of 26 cents per 100 pounds are unduly discriminatory and subject the complainants to undue prejudice and disadvantage.

The conclusions of the Commission are that the rate charged the complainants, to the extent that it exceeded the joint through rate of 26 cents to Charleston and to Huntington, was and is unreasonable and unjustly discriminatory and unduly prejudicial, and that the complainants are entitled to reparation in the sum of \$100.72, with interest, and that a rate not to exceed the rate to Charleston from said points of origin to Hinton would be a just and reasonable rate as the maximum to be charged in the future.

An order will be issued accordingly.

17 I. C. C. Rep.

No. 1811.
F. O. HELLSTROM
v.
NORTHERN PACIFIC RAILWAY COMPANY.

Submitted May 19, 1909. Decided February 17, 1910.

Rate of 50 cents per 100 pounds on hemp in carloads from Pacific coast terminals to Bismarck, N. Dak., not found to be discriminatory as compared with rate of 55 cents from same points to Chicago.

Andrew Miller for complainant.

Charles W. Bunn for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant is warden of the North Dakota penitentiary, and in his official capacity is engaged in the manufacture of binding twine from manila hemp at Bismarck, in that state. The rate of the defendant on hemp from Pacific coast terminals to Bismarck is 50 cents per 100 pounds, in carloads; to Stillwater, Minn., and Chicago, Ill., 55 cents per 100 pounds. The complainant alleges that the rate to Bismarck is unlawful.

The only evidence adduced in support of this contention is that derived from an examination of the tariffs themselves. The distance from Seattle to Bismarck is approximately 1,468 miles; to Chicago, through Bismarck, approximately 2,375 miles. Now, the complainant contends that if 55 cents is a reasonable rate to Chicago, 50 cents must be an excessive rate to Bismarck. When the defendant handles hemp from Seattle to Chicago it hauls it to Minnesota Transfer, and there makes delivery to some connection. For this service it receives less than 50 cents per 100 pounds, and the complainant asserts that the Northern Pacific certainly ought not to charge more for the transportation to Bismarck than it receives for its service to Minnesota Transfer.

Hemp from the Philippines is brought into the United States through Pacific coast ports, and is also taken via the Suez Canal to

the various ports upon the Atlantic seaboard and the Gulf of Mexico. The cost of water transportation is substantially the same to Pacific and Atlantic ports.

Chicago is something less than 1,000 miles from both the Gulf ports and most of the North Atlantic ports, while the distance from the Pacific ports is over 2,000 miles. It is evident therefore that if the rail line leading from the Pacific coast transports hemp to Chicago it must make a much lower rate per ton-mile than lines leading from the Gulf and Atlantic ports, and the same thing is true in a less degree of Stillwater.

This competitive condition at Chicago justifies the defendant in naming a rate from the Pacific coast to that point which is relatively lower than its rate to intermediate points at which the force of this competition is not felt, provided its rate to the more distant point is not so low as to be unremunerative. We can not find, in the present case, that a rate of 55 cents would be less than the cost of the service, and no claim is made that the rate from Seattle to Bismarck is unreasonably high.

The complaint will therefore be dismissed.

17 I. C. C. Rep.

No. 1481.

EAST ST. LOUIS WALNUT COMPANY

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF
TEXAS ET AL.

Submitted December 8, 1909. Decided February 8, 1910.

Rates on walnut logs in carloads from Weiner and St. Francis, Ark., and intermediate points to East St. Louis, Ill., found unreasonable.

S. F. Prouty for complainant.

S. H. West and *Roy F. Britton* for St. Louis Southwestern Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complainant challenges the lawfulness of the rates exacted by the defendants for the transportation of walnut logs in carloads from Weiner and St. Francis, Ark., and intermediate points to East St. Louis, Ill. The rate applicable from Weiner and neighboring points is $17\frac{1}{2}$ cents per 100 pounds, while the rate from St. Francis and points in that vicinity is $16\frac{1}{2}$ cents per 100 pounds. The rates from points in Missouri on the line of the defendant, the St. Louis Southwestern Railway Company, to East St. Louis range from 7 to 11 cents per 100 pounds. These rates are alleged to be unjust and unreasonable, and it is further alleged that the charge of $1\frac{1}{2}$ cents more per 100 pounds on shipments to East St. Louis than is charged on the same traffic to St. Louis is unreasonable, discriminatory, and in violation of the fourth section of the act. Reparation is asked.

It appears that the St. Louis Southwestern Railway Company of Texas does not participate in the traffic in question from Arkansas points to East St. Louis or St. Louis, and the complaint as to it will be dismissed.

The St. Louis Southwestern Railway extends in a northeasterly direction from the Texas state line, traverses the state of Arkansas and crosses the Mississippi River at Thebes, Ill., and thence runs on the east side of the river to East St. Louis. The distance from St. Francis to East St. Louis is 214 miles, and from Weiner 273 miles.

Complainant is engaged in the manufacture of various products including gun stocks from walnut logs. It makes shipments of short-length logs, not fit for export and of a cheaper grade than those exported, from various points in Arkansas, Illinois, Iowa, Missouri, and other states to East St. Louis.

The history of the rates in effect over the lines of defendants from and to the points named is, in brief, as follows:

Effective June 1, 1903, a rate of 13½ cents per 100 pounds on walnut logs (not squared), C. L., was made applicable from St. Francis and Weiner, Ark., to East St. Louis, Ill. This rate was in force till September 2, 1907, when it was advanced to 16½ cents per 100 pounds. Effective March 15, 1909, the rate from Weiner, Ark., was advanced to 18½ cents per 100 pounds. On June 15, 1909, the rate from Weiner was reduced to 17½ cents per 100 pounds, and this rate is still in force. The present rate from St. Francis is 16½ cents per 100 pounds.

In the case of *East St. Louis Walnut Co. v. M. P. Ry. Co.*, 14 I. C. C. Rep., 553, the Commission found that the rate in excess of 11½ cents per 100 pounds from Newport, Ark., to East St. Louis was unreasonable, and issued an order accordingly. In the case of *East St. Louis Walnut Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C. Rep., 575, it was found that a rate on walnut logs in excess of 14½ cents per 100 pounds from Newport via the lines of the Chicago, Rock Island & Pacific and St. Louis & San Francisco to East St. Louis was unreasonable and that the rate to St. Louis should not exceed 13 cents. The rate now in effect on this traffic from Newport to East St. Louis via both routes above named is 11½ cents. Newport is situated on the lines of the Chicago, Rock Island & Pacific and St. Louis, Iron Mountain & Southern, a short distance east of Weiner. The distance from East St. Louis via the St. Louis, Iron Mountain & Southern and Missouri Pacific is 265 miles, and via the Chicago, Rock Island & Pacific and St. Louis & San Francisco, 425 miles.

Generally speaking, the rates on logs from points in Kentucky, Tennessee, and Indiana to St. Louis and East St. Louis are the same. It does not appear that conditions attending the transportation from Weiner and St. Francis to East St. Louis are different from those surrounding traffic from Newport. Upon consideration of the evidence we find that the present rates for the transportation of walnut logs in carloads from Weiner and St. Francis, Ark., and intermediate points to East St. Louis are unreasonable and unjust to the extent that they exceed 11½ cents per 100 pounds. We find further that complainant is entitled to reparation on all shipments moving from the points in question within the period of the statute of limitations.

This finding renders it unnecessary to consider whether the exaction of a higher rate on shipments to East St. Louis than is applied

on traffic moving to St. Louis over the lines of the defendants constitutes unjust discrimination. It is to be observed in this connection, however, that there does not appear to be any reason why shipments from Arkansas points moving through Thebes to East St. Louis should be subject to a higher rate than is charged on shipments to St. Louis from the same points. Carriers on the west side of the river from the same general territory make the same rates to the same points on this traffic, and there is no competition that warrants higher rates. Shipments of logs from Newport must cross the Mississippi River at St. Louis when moving by lines serving that territory on the west side of the river, and the bridge arbitrary is absorbed in that rate.

The prayer of the petition is that the rates be reduced from all points from Weiner, Ark., to Thebes, Ill. No evidence was submitted, however, with respect to the rates from the Missouri state line to Thebes. The evidence related wholly to shipments from Arkansas points. An examination of the tariff shows that the rate from all Missouri stations from Campbell to Delta, Mo., inclusive, is 11 cents per 100 pounds, from Edna and Rockview, Mo., inclusive, 9 cents, and from Grays Point, Mo., to Thebes, Ill., 7 cents. Having nothing before us with respect to the circumstances attending the construction of the rates from the Missouri state line to Thebes, nor the conditions of the traffic between these points and East St. Louis, we are unable to determine that the rates are unreasonable or unjust. It is assumed, however, that if the reduction of the rates above indicated throw the rates from Missouri points to East St. Louis out of line, the defendant will readjust those rates accordingly. No reparation will be granted on shipments made from any Missouri point to East St. Louis.

On the question of reparation it is to be observed that the complaint was originally filed with the Commission on March 10, 1908, and no mention was made of reparation, nor were the shipments in any way referred to. It appears from an examination of the record that on September 26, 1908, complainant submitted to the Commission an amendment setting forth the shipments and the amount of reparation asked. An order has been issued dating the amendment as having been filed September 26, 1908. Accepting this latter date, the first seven shipments in the statement submitted by complainant, moving between February 9, 1906, and August 18, 1906, are barred under the ruling of the Commission. A statement submitted by complainant covers 15 cars of logs moving from Brighton, Fisher, Piggott, Greenway, and Rector, Ark., between March 6, 1907, and August 8, 1908. It will therefore be observed that some of them moved after the amendment was tendered to the Commission, and it does not appear that defendants have had any opportunity to check

the shipments and ascertain whether they were made as alleged or the weights correctly given. Accordingly no order for reparation will be made at this time. Complainant and accounting officers of defendants should check the shipments falling within the findings herein made and file an agreed statement as to the number, weight, and movement thereof, whereupon an order for reparation will be duly issued.

An order requiring the maintenance of the rate for the future will be entered.



No. 2786.

A. MERLE COMPANY

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY ET AL.

Submitted February 11, 1910. Decided February 14, 1910.

Rate of \$3 per 100 pounds on L. C. L. shipments of metal furniture knobs or trimmings from Grand Haven, Mich., Rome, N. Y., and Waterbury, Conn., to San Francisco, Cal., found unreasonable to the extent that it exceeded \$2 per 100 pounds. Reparation ordered.

J. O. Bracken for complainant.

Edward W. Camp for Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard, P. F. Dunne and *C. W. Durbrow* for Southern Pacific Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

It is alleged in this complaint that the charge by defendants, \$3 per 100 pounds, for transportation of 32 less-than-carload shipments of metal furniture knobs or trimmings from Grand Haven, Mich., Rome, N. Y., and Waterbury, Conn., to San Francisco, Cal., was unreasonable to the extent that it exceeded \$2 per 100 pounds.

The shipments moved from February, 1908, to February, 1909, inclusive, and aggregated in weight 22,612 pounds, on which total charges of \$678.18 were collected. Reparation is asked.

While these shipments moved over different routes, they are all contained in the same complaint and will be disposed of in this report.

This case is similar in all essential respects to the cases of *A. Merle Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C., Rep. 471. Those cases were submitted on the pleadings and certain stipulations. It appeared therein that by a new tariff effective December 6, 1909, the defendants in those cases and the defendants in these cases have made effective the less-than-carload commodity rate of \$2, so that it now covers shipments similar to those here in question. The \$3 charge was the first class rate applying on furniture and trimmings in less-than-carload lots.

This case was not submitted on the pleadings for the reason that certain of the defendants herein denied that the rate charged was unreasonable. It appears, however, that the New York Central & Hudson River and the Atchison, Topeka & Santa Fe have admitted that the charge exacted was unreasonable because the shipments were of the same material as those taking lower rates, and the carriers who did not so admit have become parties to the tariff which now makes the \$2 rate effective. At the hearing there was nothing introduced in evidence to show that metal furniture knobs or trimmings are not of the same material as brass shells and canopies for lighting fixtures, or that there was any transportation reason for a higher charge. The only difference between the two commodities appears to be the use to which they are put.

Therefore, in view of the fact that the carriers have since voluntarily put into effect the rate applicable to shipments of this character for which complainant contends, and at least part of them acknowledge that the claim for reparation is a just one, and no reason appears why higher charges were made on these shipments, we find that brass furniture trimmings or knobs should not take higher rates than brass shells and canopies for lighting fixtures, and that a reasonable rate at the time of the movements referred to in this complaint was, and for the future will be, \$2 per 100 pounds. We further find that the complainant is entitled to reparation on the said shipments in the sum of \$226.12, with interest. Orders will be issued to the carriers parties to the routes over which the traffic moved to pay the amount of reparation to complainant on shipments in which they participated.

No. 2485.

BLODGETT MILLING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted October 21, 1909. Decided February 17, 1910.

Reparation awarded for the collection of unreasonable charges upon a carload of buckwheat shipped from Gobles, Mich., to Janesville, Wis.

Frank H. Blodgett for complainant.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

O. E. Butterfield for Michigan Central Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

On December 11, 1906, complainant shipped a carload of buckwheat from Gobles, Mich., to Janesville, Wis., via the lines of the defendants, charges being assessed in accordance with the through rate of 21½ cents per 100 pounds. Owing to a dispute between the shipper and the carriers as to the rate properly applicable, the freight charges were not paid until December 12, 1908. The rate of 21½ cents per 100 pounds as applied is alleged to be unjust and unreasonable to the extent that it exceeds the combination of rates through Chicago, yielding a total through charge of 14 cents per 100 pounds. On August 6, 1907, the through rate was reduced to 14 cents per 100 pounds, the combination upon Chicago as aforesaid. It appears, however, that on September 30, 1907, the 21½-cent rate was restored.

Defendants admit the justice of the complaint and join in the request that reparation be awarded. By stipulation between the parties the complaint is submitted for determination upon the pleadings.

We find that the rate of 21½ cents per 100 pounds assessed and collected on this shipment was unjust and unreasonable to the extent that it exceeds the rate of 14 cents per 100 pounds as subsequently established. We find further that the rate to be observed by the defendants in the future for the transportation of buckwheat in carloads from Gobles, Mich., to Janesville, Wis., should not exceed 14 cents per 100 pounds. Reparation will be awarded in the amount of \$26.25 as claimed, with interest. An order will be issued accordingly.

No. 2586.

BLACK HORSE TOBACCO COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

No. 2664.

SAME

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted December 8, 1909. Decided February 17, 1910.

1. The minimum weights imposed by defendants upon complainant's shipments of leaf tobacco in hogsheads from points in Kentucky and Tennessee to points in Mexico found to be excessive and reparation awarded.
2. The Commission has no authority to establish a rate of transportation in Mexico, nor to order the maintenance of a rate for the future from a point in the United States to a point in Mexico, but it may require the American carriers to cease and desist from continuing to apply a joint through rate or any rule, regulation, or practice in connection with their joint through rate; and it may, where such rate has been voluntarily maintained, inquire whether it has been reasonable, and if found unreasonable, award damages.
3. If an initial carrier files and posts a tariff naming joint rates from stations upon its line to destinations upon a connecting line, in which tariff the connecting line does not concur, the initial line thereby becomes responsible to the shipper under its tariff. If the shipper is compelled to pay, under rates legally in effect, a greater transportation charge than that named in the tariff, he may recover from the initial carrier the difference, certainly if the rate posted by it is found to be reasonable.
4. Every carrier party to a joint rate is jointly and severally responsible for that rate, and those carriers who actually participate in the transportation under a joint rate are jointly and severally liable in damages for the unreasonableness of that rate.
5. A complainant is not deprived of his right to a reasonable rate by the fact that the defendants, through neglect of the rules of this Commission as to the publication of their tariffs, had failed to establish that rate in legal form.

W. R. Perkins for complainant.

Sloss D. Baxter for Louisville & Nashville Railroad Company.

Ed. Baxter for Illinois Central Railroad Company.

James Hagerman and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company, and Missouri, Kansas & Texas Railway Company of Texas.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The questions presented in these two cases are analogous and the cases were heard together. In both cases the shipments consisted of leaf tobacco in hogsheads and the allegation is that an excessive minimum weight was imposed.

In No. 2586 the complainant shipped by the Illinois Central as the initial line, over the lines of the defendants, to Laredo, and from Laredo over the line of the Mexican National Railroad to Monterey, Mexico, four carloads of tobacco containing, respectively, 28,915; 30,925; 31,575; and 28,205 pounds, aggregating 119,620 pounds. The minimum then in effect was 33,069 pounds, and charges were assessed upon three of these carloads on the basis of that minimum at a rate of 96 cents per 100 pounds, and upon the remaining carload at a rate of 94 cents per 100 pounds, those being the joint through rates at that time supposed to be in effect between the points of origin and Monterey. The charges so assessed aggregated \$1,263.27. The complainant insists that the minimum should not have exceeded 27,558 pounds and that therefore the charges should have been assessed upon the actual weights. If so assessed they would have amounted to \$1,142.57, or \$120.70 less than the amount paid by the complainant.

No. 2664 involves six carloads of tobacco, aggregating 182,223 pounds. In each case the actual weight equaled or exceeded 27,558 pounds, and charges were assessed upon a minimum of 33,069 pounds, which was in every case in excess of the actual loading. The charges exacted of the complainant and paid by it were \$1,989.46, whereas had they been assessed upon the actual weight they would have amounted to \$1,749.35, a difference of \$240.11, which the complainant claims to recover. This amount, \$240.11, includes \$84.70 error in computing the charges upon one carload.

All the above shipments were made between October 8 and December 6, 1907.

The testimony shows that from 1900 to 1903 the minimum upon shipments of this character over these lines was 20,000 pounds; that from 1903 to 1907 it was 22,046 pounds; that from October 5, 1907, to June 5, 1908, it was 33,069 pounds, while on June 5, 1908, it was made 27,558 pounds. The testimony further indicates that it is impossible to load into cars not exceeding 40 feet in length 33,069 pounds of tobacco in hogsheads, and also that lower minimums prevail in other territory.

We find that the minimum imposed, 33,069 pounds, was unreasonable, and that it ought not to have exceeded 27,558 pounds. The complainant has therefore been compelled to pay unreasonable charges in the two cases by the amounts above stated.

These shipments were all from points in Kentucky to Monterey, Mexico. They were carried by the American lines to Laredo, and from Laredo to Monterey by the Mexican line. The rate was a joint through rate, the divisions of which do not appear in this record nor in the files of the Commission, and the tariff establishing that rate was, at the time of this movement, in no way concurred in by the Mexican railway, nor is that railway a party to these proceedings. Under our present rules we would have the concurrence of the Mexican line or a statement of the agreed divisions and so could determine definitely the proportions and liabilities of the American carriers. Can we award reparation for the full excess or for any part of the excess against the American lines?

Every carrier party to a joint rate is jointly and severally responsible for that rate. *Osborne v. C. & N. W. Ry. Co.*, 48 Fed. Rep., 49; *Interstate Commerce Commission v. L. & N. R. R. Co.*, 118 Fed. Rep., 613. Those carriers who actually participate in the transportation under a joint rate are jointly and severally liable in damages for the unreasonableness of that rate. *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C. Rep., 199. Should the same rule be applied where the transportation is partly in a foreign country and where one of the carriers participating in the joint rate is a foreign railway which has not concurred in the tariff establishing that rate?

The act to regulate commerce confers jurisdiction over common carriers engaged in the transportation of persons or property from any place in the United States to an adjacent foreign country. That act further provides that "All charges made for any service rendered or to be rendered, in the transportation of passengers or property, as aforesaid," shall be just and reasonable. These American carriers are therefore under requirement to impose reasonable charges for the transportation before us.

If the American line saw fit, it might doubtless name a rate to the Mexican border, and in that event we could deal only with the service up to the Mexican line. Instead of adopting that course the American carriers, in connection with the Mexican carrier, established a joint charge for the entire service from the point in the United States to the point in Mexico, and gave no information as to the part of that charge which would accrue to the American roads. This does not relieve the American carriers from obligation to impose a reasonable charge for their service; it does make it impossible for the Commission to determine the reasonableness of that charge, except by examining the entire through rate.

Clearly, we have no authority to establish a rate of transportation in Mexico; nor to order the maintenance of a rate for the future from a point in the United States to a point in Mexico; but we may require

the American carriers to cease and desist from continuing to apply a joint through rate, or any rule, regulation, or practice in connection with that joint through rate, and we may, where such rate has been voluntarily maintained, inquire whether it has been reasonable, and if found unreasonable, award damages in that behalf.

A still further question is presented in No. 2664, in which the Louisville & Nashville was the originating carrier.

All the American lines over which these shipments moved, except the Louisville & Nashville, are members of the Southwestern Tariff Committee, which files with the Commission the rates, under proper authority from the respective carriers. The Louisville & Nashville is not a member of the Southwestern Tariff Committee and has not authorized that committee to file its schedules.

Effective June 27, 1907, the Southwestern Tariff Committee, by tariff, I. C. C. 491, established a minimum weight on shipments of tobacco between points of origin in Kentucky and Monterey, Mexico, of 22,046 pounds. The Louisville & Nashville was named a party to this tariff, but did not file its concurrence. Effective October 5, 1907, the Southwestern Tariff Committee, by Supplement 3 to the original tariff, increased the minimum to 33,069 pounds. Effective October 11, 1907, the Louisville & Nashville established No. 491 as its tariff, but made no reference to Supplement 3. Effective December 23, the Louisville & Nashville published Supplement 3 as its own supplement No. 4. The Southwestern Tariff Committee did not concur in either of these tariffs when filed by the Louisville & Nashville.

It seems plain that between October 11 and December 23, 1907, during which period all the shipments in question moved, there was no joint through rate in effect between these points of origin and Monterey, under the rules of this Commission. The Southwestern Tariff Committee had filed a schedule naming rates from points upon the Louisville & Nashville, but that schedule had not been concurred in by the Louisville & Nashville. October 11, the Louisville & Nashville filed as its schedule the tariff of the Southwestern Tariff Committee, but, in the meantime, that tariff had been changed. Assuming that a through rate could be constructed by the filing independently of the same tariff by these different lines, that in the case before us had not been done. The minds of these two parties had not met upon any tariff; nor had they concurrently established the same tariff. Under our rulings the rates in effect upon the several lines ought properly to have been applied to these shipments. These combined rates during this period were, when based on New Orleans, \$1.18, and when based on St. Louis, \$1.23 per 100 pounds, with a minimum of 22,046 pounds from point of origin to the gateway, and 33,069 pounds from the gateway to destination.

If a carrier files and posts a tariff naming joint rates from stations upon its line to destinations upon a connecting line, in which tariff the connecting line does not concur, the initial line thereby becomes responsible to the shipper under its tariff. If the shipper is compelled to pay, under rates legally in effect, a greater transportation charge than that named in the tariff he may recover from the initial line the difference, certainly if the rate posted by it is found to be reasonable. In the case before us we might well award this complainant damages against the Louisville & Nashville for the full amount of the difference between the rates which were legally in effect and which should have been applied to this transportation and those rates named by its tariff.

In the present instance the Louisville & Nashville is not, however, the only transgressor. The first delinquent was the Southwestern Tariff Committee, which filed, without authority from the Louisville & Nashville, and without its concurrence, a tariff naming rates from points upon its line. There seems to be no good reason why one of these lines should be held more responsible than the other for failure to properly establish these rates. We think all these lines ought to be and may legally be held jointly and severally responsible.

When these shipments moved all the defendants assumed to have in effect a joint through rate. They accepted and transported the merchandise of the complainant under that rate. This being so, the Commission may determine what would have been a reasonable joint rate and give complainant the benefit of that.

In *Corporation Commission of the State of Oklahoma v. C., R. I. & G. Ry. Co.*, 17 I. C. C. Rep., 379, decided January 3, 1910, it appeared that the defendants had formerly maintained joint rates for the transportation of lumber between points in Texas and points in Oklahoma; that these joint rates had been unlawfully canceled but subsequently restored. It was held that with respect to shipments made during the interim when no joint rate was in effect and upon which the complainant was required to pay local rates, damages would be awarded in the difference between the joint rate which should have been in effect and the local rates which were exacted. So, here, there had been in effect joint rates between these points, and such rates are to-day operative. The defendants accepted and transported the property of the complainant under what all parties assumed to be a lawful joint rate. The complainant is not deprived of its right to a reasonable rate by the fact that the defendants, through neglect of the rules of this Commission as to the publication of their tariffs, had failed to establish that rate in legal form. We hold that 96 cents was a reasonable charge to apply to these shipments upon a minimum of 27,558 pounds, and that the complainant is entitled to recover against all the

defendants, jointly and severally, the amount of the difference between what it has paid and what it would have been required to pay upon that basis.

In No. 2586 the complainant is entitled to recover \$120.70, with interest, and in No. 2664, \$240.11, with interest, for which orders will be issued.

It appears from an examination of our tariffs that within the last year there have been several changes in these minimums, including one attempt to establish a sliding scale. Our inquiry was directed only to the particular shipments under consideration; the complainant does not insist upon an order for the future and, on the whole, we have decided to make none.

No. 2707.

W. P. FULLER & COMPANY

v.

PITTSBURG, CHARTIERS & YOUGHIOGHENY RAILWAY
COMPANY ET AL.

No. 2787.

AMERICAN OIL & PAINT COMPANY

v.

ERIE RAILROAD COMPANY ET AL.

Submitted February 11, 1910. Decided February 17, 1910.

Reparation denied on shipments of oil in barrels from New York, Cleveland, and Minneapolis, to San Francisco and Seattle, as the rate charged was not found unreasonable.

J. O. Bracken for complainants.

E. W. Camp, Robert Dunlap, and T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

E. W. Camp for Chicago Great Western Railway Company and receivers.

F. C. Dillard, P. F. Dunne, C. W. Durbrow, and W. F. Herrin for Union Pacific Railroad Company, Southern Pacific Company, and others.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The above complaints are brought for the recovery of reparation on account of the shipment of oil in barrels from New York, Cleveland, and Minneapolis to San Francisco and Seattle. The rates charged were in all cases \$1 per 100 pounds, and the complainants insist that they should have been 90 cents per 100 pounds.

The shipments all moved between January 1, 1909, and June 1, 1909. Previous to January 1 the rate applicable to similar shipments had been 90 cents, and on June 1 that rate was restored. The complainants insist that the fact that the defendants had for many years

17 I. C. C. Rep.

maintained a rate of 90 cents, and that they restored that rate after a trial of the higher rate for five months, shows that the 90-cent rate was reasonable and that the higher rate was unreasonable.

The defendants insist that the 90-cent rate has been forced by water competition; that it was found impossible to maintain the advance upon actual trial, owing to such competition, and that since this is a compelled rate its maintenance does not show the higher rate to be excessive. The evidence of the defendant tends strongly to support its contention.

The Commission has several times examined these transcontinental rates from the territory covered by these shipments to Pacific coast terminals and has reached the conclusion that such rates as a whole are strongly influenced by water competition. *City of Spokane v. N. P. Ry. Co.*, 15 I. C. C. Rep., 376. Both the courts and the Commission hold that a compelled rate can not be taken as the standard by which to measure the reasonableness of a voluntary rate, hence the maintenance of the 90-cent rate has not the same significance as though it had not been influenced by water competition.

The 90-cent rate was in effect when these petitions were brought, and is still in force. The petitions do not ask the establishment of a rate for the future. The future rate is not therefore in issue, and the only question before us relates to the payment of reparation. Under these circumstances we feel justified in confining our attention to the record made by the complainants, and upon that record we fail to find that the rate charged was unreasonable. The complaints will therefore be dismissed.

No. 2110.

WHOLESALE FRUIT & PRODUCE ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

No. 2237.

ST. PAUL BOARD OF TRADE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

No. 2271.

MINNEAPOLIS PRODUCE EXCHANGE

v.

SAME.

Submitted February 11, 1909. Decided February 17, 1910.

1. Complainant in case No. 2110 asks that the Commission extend its order in the former case as to compelling carriers at Chicago to furnish assistance in unloading carload shipments of fruits and vegetables so as to include all kinds of produce in packages; and complainants in cases Nos. 2237 and 2271 ask that carriers at St. Paul and Minneapolis be required to unload carload shipments of fruits and vegetables at those cities; *Held*, That under existing circumstances the present rule should not be disturbed. Complaints dismissed.
2. There is no good reason why ordinary package freight, which is loaded and unloaded upon the team track or at the private siding, should not be handled into and out of the car by the shipper in the same manner that bulk freight is.
3. It appears that in many instances these fruits and vegetables are allowed to remain in the car for a considerable time after its arrival, and are delivered by the consignee from the car itself to the purchaser. Where this custom prevails it would impose a hardship upon the carrier to require it to furnish help for the unloading of the car at whatever time the shipper might require such services.

4. It is urged that by leaving in force the order of the Commission in the original case and dismissing these complaints the Commission creates a discrimination in favor of fruits and vegetables at Chicago as against other kinds of freight, and in favor of Chicago as against other localities; *Held*, That if discrimination can be predicated upon these facts, it is not in the present case undue. The handlers of package freight at Chicago would be in no respect benefited if the handlers of fruits and vegetables were required to unload their traffic, nor are the handlers of fruits and vegetables benefited by the fact that other produce in packages is not unloaded by the carriers. Conditions applying to the handling of fruits and vegetables at Chicago are not the same as those applying at St. Paul and Minneapolis.

Edward G. Davies and Holsinger & Swan for complainants.

Robert Dunlap and T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

E. B. Peirce and W. T. Hughes for Chicago, Rock Island & Pacific Railway Company and Chicago & Eastern Illinois Railroad Company.

Blewett Lee and W. S. Kenyon for Illinois Central Railroad Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

Hale Holden and G. H. Crosby for Chicago, Burlington & Quincy Railroad Company.

G. W. Seever for Minneapolis & St. Louis Railroad Company.

J. F. Erdall for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

G. W. Markham and A. G. Briggs for Chicago Great Western Railway Company and receivers.

J. D. Armstrong for Great Northern Railway Company and Northern Pacific Railway Company.

C. W. Bunn for Northern Pacific Railway Company.

Thomas Wilson and R. L. Kennedy for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Previous to January 1, 1908, it had been the practice of most carriers transporting fruits and vegetables in packages to Chicago to furnish assistance in the unloading of the cars, but upon that date all the carriers, by concerted action, ceased to furnish such assistance when the carload rate was assessed. Thereupon the receivers of fruits and vegetables at that market applied to the Commission, stating that the refusal of carriers to help in the unloading imposed an additional burden upon them, and praying that the carriers might

be ordered to continue the furnishing of such assistance. In *Wholesale Fruit & Produce Asso. v. A., T. & S. F. Ry. Co.*, 14 I. C. C. Rep., 410, this complaint was sustained and the order asked for granted.

The three above cases grow out of this decision. No. 2110 is a proceeding by produce men at Chicago to extend the order of the Commission, as to fruits and vegetables, to the unloading of all kinds of produce in packages. No. 2237 asks that carriers be required to unload fruits and vegetables at St. Paul, and No. 2271 prays for the same relief at the city of Minneapolis.

All these cases have been heard at considerable length, but the facts developed may be briefly stated, so far as is material to the disposition of the questions presented.

At Chicago assistance in the unloading of package freight in carloads has for many years been furnished, and this has extended, in some degree, to the loading of the same kind of freight.

The extent has varied with the character of the commodity. Such assistance has been most generally furnished in case of perishable fruits and vegetables. It has been supplied, to a considerable extent, in case of produce in packages, like butter, eggs, cheese, etc., and, in a less degree, the same assistance has been extended in case of other freight.

The rule as to the furnishing of such assistance has differed with different carriers. Some railroads have furnished such help very generally in case of most commodities, while others have done so scarcely at all in case of any commodity.

The rule has varied with the same carrier at different yards. Most railways entering Chicago have several points at which freight is received and delivered upon team tracks, and such assistance has frequently been generally furnished by a given railroad at one of these yards and none at all furnished at others. There has been no uniform rule on this subject. Competition seems to have produced its effect, and a good deal has depended upon the disposition of the official having the matter in charge.

At Minneapolis assistance has been furnished in the unloading of fruits and vegetables to a very considerable extent. Fruits and vegetables are generally shipped upon an estimated weight per package, and the freight charges are determined by counting the number of packages of a given kind placed in the car. This renders it necessary for some representative of the railroad to count and identify the packages when the car is loaded, and it is also customary, as a matter of precaution, to count these packages out when the car is unloaded. The railway employees who do the checking out can, without much inconvenience, bring the package to the car door, and this seems to have been at Minneapolis the general custom. If the checkers, as these employees are called, were busy, the drayman has unloaded

the car himself, but in probably the majority of instances assistance has been supplied.

All railroads have not done this to the same extent and one or two claim not to have done so at all; but these lines bring an insignificant part of the fruit and vegetable traffic to Minneapolis, and it fairly appears that those carriers handling the bulk of this business have in a majority of instances assisted in the unloading of these cars.

The furnishing of assistance at this point has not been confined to fruits and vegetables, but has extended in some degree to package freight of other kinds.

At St. Paul such assistance has been furnished to a much less extent. The fruit and vegetable business at that city is more limited, and the competition appears to be less acute. A majority of the carriers at St. Paul have never furnished any help in the unloading of this traffic, and none of them has supplied it to the same extent as at Minneapolis. The testimony relating to conditions at St. Paul is extremely meager and unsatisfactory, but our general impression is that, as a whole, but little assistance of this kind has been furnished at that city; certainly, much less than at the neighboring market of Minneapolis.

The testimony of the defendants shows that at other points in Western Classification territory such assistance has not in recent times been afforded. Cities like Duluth, Omaha, Kansas City, and St. Louis were especially referred to. Since January 1, 1908, no assistance has been furnished at any point except Chicago, where the practice has been continued in case of fruits and vegetables in accordance with the order of the Commission.

In disposing of the original case the history and present status of this matter was gone into at some length. It there appeared that in the three principal Classifications the first requirement that the shipper should load and unload carload freight extended only to bulk freight. Later, it seems to have been applied to heavy and bulky freight which the carrier could not conveniently handle, and still later, in the Western and Official Classification, it was made to cover all freight to which the carload rate was applied. The Southern Classification still provides for the loading and unloading of bulk freight only by the shipper.

These changes in the rule perhaps represent changes in the method of handling package freight. Bulk freight must from the first have been transferred from the car to the wagon or from the wagon to the car, not going through the freight house, but package freight at first would be generally handled through the freight depot. Gradually, however, this kind of carload freight came to be loaded and unloaded at private sidings and upon team tracks.

There is no good reason why ordinary package freight, which is loaded and unloaded upon the team track or at the private siding, should not be handled into and out of the car by the shipper in the same manner that bulk freight is. The car is placed at the disposal of the shipper, who puts into it whatever he desires. When loaded it is received by the railroad, receipted for as a carload, and the charges are determined by weighing the car and deducting the tare. At the point of delivery the car is received by the consignee and unloaded at his convenience.

Fruits and vegetables are usually handled upon a different basis, as already suggested. They are packed for shipment in boxes of a uniform size, and these packages are given an estimated weight. The freight charges are assessed by counting the packages, and this renders it necessary for the railroad to count the packages into the car and again out of it. As a practical matter, when these packages are counted out the same individual who does the checking for the railroad can bring the package to the car door. It appeared in the Minneapolis and St. Paul cases that the effect of the withdrawal of this assistance on January 1, 1908, had been to increase the cost of unloading the car by \$2 per car to the consignee without any saving whatever to the carrier, except in one single instance.

It is always desirable that such rules should be adopted for the handling of freight as makes for what is finally the greatest economy, and there seems to be here a distinction which might perhaps properly be recognized between that kind of package freight which is shipped upon an estimated weight by the package and that which is shipped upon a gross weight. A further consideration of this matter discloses, however, that in many instances it is possible to determine the number of packages in the car after the loading is completed, and it also appeared in the Minneapolis case that, as a practical matter, the easiest way of counting the packages was after they had been taken out of the car and placed upon the dray, so that a single checker could supervise and check off the unloading of several carloads at once.

It has also appeared from the investigations of the Commission that in many instances these fruits and vegetables are allowed to remain in the car for a considerable time after its arrival, being delivered by the consignee from the car itself to the purchaser. Where this custom prevails it would impose a hardship upon the carrier to require it to furnish help for the unloading of the car at whatever time the shipper might require such services.

It was suggested in the original case that the rule itself might well differ with the varying conditions at different markets. There is no similarity between the manner in which this traffic is handled in the yards of the Illinois Central at Chicago and the situation at

Minneapolis. It might well be a wise rule that carriers should be required to furnish this assistance in the congested terminals of a great metropolis like Chicago or New York, where cars must be promptly unloaded, and should not be required to do so at smaller places; but so far as this record shows there are no conditions at Minneapolis which would render the furnishing of such assistance more necessary or proper there than at St. Paul or Omaha or Kansas City. Whatever rule is applied at one of these points should be applied at all. It is desirable that railroad practices should be uniform and the Commission is in sympathy with the effort of carriers to bring about such uniformity.

In the present case the testimony shows that the action of the defendants on January 1, 1908, cost these complainants \$2 per car in the handling of their traffic at Minneapolis. In view of this fact, especially since while the cost to the consignee has been increased, no corresponding saving to the carrier has resulted, we should be inclined to find some way of perpetuating former conditions. But there is no basis upon which this can be done. This unloading assistance has been furnished in different proportions at different times to different persons and by different railroads. No order of general application could be made if Minneapolis stood alone.

No reason is apparent why the rule at Minneapolis should not be applied at St. Paul, nor are conditions at these twin cities different from those at Omaha, Kansas City, and St. Louis. Since the general practice has been against the furnishing of assistance, and since the practice should be uniform unless there is a difference in conditions, we feel that the present rule should not be disturbed and that the complaints in Nos 2271 and 2237 must be dismissed.

The same must be said as to the unloading of other package freight than fruits and vegetables at Chicago. The past custom in that regard has not been uniform nor general; nor do we find any reasons which seem to require its continuance. Under these circumstances the same rule should be applied at Chicago as is generally in force, and this complaint should also be dismissed.

It is urged that by leaving in force our order in the original case and dismissing these complaints we create a discrimination in favor of fruits and vegetables at Chicago as against other kinds of freight and in favor of Chicago as against other localities; but if discrimination can be predicated upon these facts, it is not in the present case undue. The handlers of package freight at Chicago would be in no respect benefited if the handlers of fruits and vegetables were required to unload that traffic; nor are the handlers of fruits and vegetables benefited by the fact that other produce in packages is not unloaded by the carriers.

Dealers in fruits and vegetables at Minneapolis are not in competition with those at Chicago in such a way that those at one locality have any direct or sensible interest in a practice of this kind at the other. Three days are now, and have been in the past, allowed at Minneapolis for the unloading of fruits, while but two days have been allowed at Chicago, and this has occasioned no claim of preference.

As already suggested, such rules and practices should be uniform, unless some good reason to the contrary exists, but here such reason is found in the original case. Conditions applying to the handling of fruits and vegetables at Chicago are not the same as those applying to other package freight; nor are they the same as those applying at St. Paul and Minneapolis. The defendants admitted in that case that for a long time this custom had been universal, with the exception of a single carrier. The great bulk of this perishable traffic reaches Chicago via the Illinois Central. It must be promptly unloaded, and usually is unloaded immediately upon its arrival. It appeared in the first case and had appeared in former cases before the Commission that the rates of that company were established with the understanding that the traffic was to be unloaded by the carrier. Counsel for that company admitted upon the argument of the present cases that his company was to-day performing, under the order of the Commission, exactly the service which it had performed for years, and was receiving for a part of that service 1 cent per 100 pounds more.

An attempt was made upon the hearing of the present cases to show that the admission made by the defendants in the former case was not correct, and with respect to some of the carriers it now fairly appears that assistance had not been furnished to as great an extent as the admission indicated; but we think these defendants should be required to stand upon the record which they originally made. If we were satisfied that the effect of that order was to unduly prejudice any description of traffic or any shipper, we should strike it off, but being satisfied that its only effect is to impose upon these defendants a burden which they ought justly to bear, we must decline to reconsider our action in that case.

Complaints will be dismissed.

**CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED
REPORT DURING THE TIME COVERED BY THIS VOLUME.**

1095. **FOSTER LUMBER COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.**—Rates on lumber and shingles from Pacific Coast points to Towner, Colo., and Tribune, Kans. *L. F. Bird* for complainant. *James C. Jeffery, Hale Holden, and H. A. Scrandett* for defendants. January 11, 1910. Dismissed on motion of complainant.

1125. **MONTGOMERY FREIGHT BUREAU v. LOUISVILLE AND NASHVILLE RAILROAD COMPANY.**—Rates on various commodities from New Orleans, La., to Montgomery, Ala. *H. S. Kealhofer* for complainant. *Ed. Baxter* for defendant. January 3, 1910. Discontinued.

1135. **JAMES E. STARK & COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.**—Rates on hard-wood lumber from Missouri, Arkansas, and Louisiana to various destinations. *W. A. Percy* for complainant. *S. H. West, E. B. Peirce, James C. Jeffery, Martin L. Clardy, Roy F. Britton, E. L. Sargent, M. L. Bell, R. C. Fyfe, Charles E. Perkins, H. J. Campbell, and Wallace T. Hughes* for defendants. December 7, 1909. Dismissed on motion of complainant.

1256. **COUNT R. BOYD v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Rates on yellow pine lumber from Georgia, Alabama, Mississippi, and Florida to various destinations. *Litton Hickman* for complainant. *Ed. Baxter* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1257. **A. E. BAIRD LUMBER COMPANY ET AL. v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Rates on yellow pine lumber from Georgia, Alabama, Mississippi, and Florida to Nashville, Tenn. *Edward E. Barthell, Nathan Cohn, Stokes & Stokes, Litton Hickman, and W. O. Vertrees* for complainants. *Ed. Baxter, G. W. Kretzinger, H. A. Taylor, and H. Murray Andrews* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1339. **JEFFERSON LUMBER COMPANY. v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Rates on lumber from points in Alabama to Louisville, Ky. *Charles S. Hillyer* for complainant. *Ed. Baxter* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1347. **RAILROAD COMMISSION OF INDIANA v. SOUTHERN INDIANA RAILWAY COMPANY.**—Discrimination in supplying cars for shipments of coal from mines in the State of Indiana to points in other states.

C. V. McAdams for complainant. *Carl E. Wood, W. T. Abbott, George T. Buckingham, and Frank S. Jones* for defendant. November 5, 1909. Dismissed on motion of complainant; complaint satisfied.

1366. *KEYSTONE COAL COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.*—Rates on yellow pine lumber from Louisiana points to Chicago, Ill. *Sheldon Haddock* for complainant. *Ed. Baxter, N. S. Brown, Winston Payne, Strawn & Shaw, Hale Holden, Wm. J. Henley, F. J. Jerome, and E. B. Peirce* for defendants. September 25, 1909. Transferred to Docket Nos. 698–707 for adjustment as to shipments east of the Mississippi River.

1386. *NICOLA, STONE & MYERS COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Rates on yellow pine lumber from Texas, Arkansas, and various other States to and through Cincinnati, Cairo, and Ohio River gateways to Central and Trunk line Territories. *F. S. Bright, F. S. Masten, Goulder, Holding & Masten, Green & Green, and T. M. & J. D. Miller* for complainant. *Ed. Baxter, R. Walton Moore, McIntosh & Rich, S. F. Andrews, S. R. Prince and Arthur R. Thompson* for defendants. September 25, 1909. Transferred to Docket Nos. 698–707 for adjustment.

1469. *COHN & GOLDBERG v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.*—Rates on yellow pine lumber from Alabama points to Nashville, Tenn. *Nathan Cohn* for complainant. *Ed. Baxter* for defendant. September 25, 1909. Transferred to Docket Nos. 698–707 for adjustment.

1616. *HARRON, RICKARD & MCCONE v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.*—Rates on band-saw machines from Cincinnati, Ohio, to San Francisco, Cal. *J. O. Bracken and Lester C. Burnett* for complainant. *E. N. Clark, T. L. Philips, Wm. F. Herrin, P. F. Dunne, F. C. Dillard, E. B. Peirce, and C. W. Durbrow* for defendants. November 5, 1909. Dismissed on motion of complainant.

1679. *M. R. GRANT v. GULF & SHIP ISLAND RAILROAD COMPANY ET AL.*—Rates on yellow pine lumber from Collins, Miss., to Chicago Heights, Ill. *M. R. Grant* for complainant. *Ed. Baxter and Sidney F. Andrews* for defendants. September 25, 1909. Transferred to Docket Nos. 698–707 for adjustment.

1717. *CRESCENT LUMBER COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.*—Rates on yellow pine lumber from Kennedy, Ala., to Detroit, Mich. *R. W. Harris* for complainant. *Ed. Baxter, Sidney F. Andrews and Claudian B. Northrop* for defendants. September 25, 1909. Transferred to Docket Nos. 698–707 for adjustment.

1719. *PILLSBURY-WASHBURN FLOUR MILLS COMPANY ET AL. v. GREAT NORTHERN RAILWAY COMPANY.*—Rates on flour from Anoka,

Minn., to various destinations; milling in transit. *Albert E. Clarke* for complainants. *J. D. Armstrong* and *Wm. R. Begg* for defendants. January 13, 1910. Dismissed on motion of complainants.

1729. *ENTERPRISE COAL COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.*—Rates on anthracite coal from Spadra, Ark., to points in Tennessee, North Carolina, and other States. *Wm. H. Taylor* for complainant. *Martin L. Clardy* and *James C. Jeffery* for defendants. November 22, 1909. Dismissed on motion of complainant.

1736. *M. R. GRANT v. ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.*—Rates on yellow pine lumber from Meridian and Russell, Miss., to Terre Haute, Ind., St. Louis, Mo., and Kenosha, Wis. *R. W. Harris* for complainant. *M. F. Watts, Ed. Baxter, Sidney F. Andrews, S. A. Lynde, W. T. Abbott,* and *E. B. Peirce* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1737. *M. R. GRANT v. NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY ET AL.*—Rates on yellow pine lumber from Mississippi points to points north of the Ohio River. *R. W. Harris* for complainant. *Ed. Baxter, Sidney F. Andrews, McPherson & Bills, D. W. Stevens, Edward Colston,* and *E. B. Peirce* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1738. *PRIME LUMBER COMPANY v. ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.*—Rates on yellow pine lumber from Mississippi points to points north of the Ohio River. *R. W. Harris* for complainant. *Wm. Ellis, Winston, Payne, Strawn & Shaw, Edward Colston, George F. Brownell, H. Murray Andrews, L. J. Hackney, Wm. L. Reed, M. F. Watts, Ed. Baxter, Sidney F. Andrews, Hale Holden, Henry C. Starr, A. P. Burgwin,* and *C. B. Fernald* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1739. *PRIME LUMBER COMPANY v. MOBILE & OHIO RAILROAD COMPANY ET AL.*—Rates on yellow pine lumber from Mississippi points to points north of the Ohio River. *R. W. Harris* for complainant. *Wm. Ellis, Winston, Payne, Strawn & Shaw, Ed. Baxter, Sidney F. Andrews, L. J. Hackney, M. F. Watts, Hale Holden, Wilson, Warren & Child,* and *S. A. Lynde* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1740. *M. R. GRANT v. ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.*—Rate on yellow pine lumber from points in Mississippi to points north of the Ohio River. *R. W. Harris* for complainant. *Ed. Baxter, Sidney F. Andrews, Kretzinger, Gallagher & Rooney,* and *M. J. Clark* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1741. PRIME LUMBER COMPANY *v.* MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY ET AL.—Rate on yellow pine lumber from Mississippi points to points north of the Ohio River. *R. W. Harris* for complainant. *Ed. Baxter, Sidney F. Andrews, and McIntosh & Rich* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1742. PRIME LUMBER COMPANY *v.* ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.—Rate on yellow pine lumber from Mississippi points to points north of the Ohio River. *R. W. Harris* for complainant. *Wm. Ellis, Knapp, Haynie & Campbell, Winston, Payne, Strawn & Shaw, Ed. Baxter, Sidney F. Andrews, L. J. Hackney, Kretzinger, Gallagher & Rooney, Hale Holden, Henry C. Starr, George F. Brownell, H. Murray Andrews, John G. Williams, and S. A. Lynde* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1748. CRESCENT LUMBER COMPANY *v.* ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.—Rate on yellow pine lumber from Hickory, Miss., to Ashland, Ohio. *R. W. Harris* for complainant. *Ed. Baxter, Sidney F. Andrews, George F. Brownell, and H. A. Taylor* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1749. C. W. COCHRAN LUMBER COMPANY *v.* MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY ET AL.—Rate on yellow pine lumber from Philadelphia, Miss., to Chicago, Ill. *R. W. Harris* for complainant. *Ed. Baxter, Sidney F. Andrews, F. S. Brown, and McIntosh & Rich* for defendants. September 25, 1909. Transferred to Docket Nos. 698-707 for adjustment.

1786. IOLA PORTLAND CEMENT COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Rates on Portland cement from Iola, Kans., to Kansas City, Mo. *W. J. Sterling and W. C. Culbertson* for complainant. *Martin L. Clardy, James C. Jeffery, James Hagerman, Joseph M. Bryson, Robert Dunlap, T. J. Norton, James L. Coleman, and W. B. Groseclose* for defendants. June 8, 1909. Dismissed on motion of complainant; negotiations pending.

1801. ROPER LUMBER-CEDAR COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.—Rate on posts from Michigan points to various destinations. *Hunter & Wormelle and F. J. Trudell* for complainant. *A. G. Briggs, G. W. Markham, and S. A. Lynde* for defendants. June 8, 1909. Dismissed on motion of complainant.

1902. W. A. TULLY GRAIN COMPANY *v.* FORT SMITH & WESTERN RAILROAD COMPANY ET AL.—Rate on snap corn from Okemah, Okla., to Austin, Tex. *W. A. Tully* for complainant. *Charles E. Warner* for Ft. W. & D. C. R. R. Co. September 24, 1909. Transferred to Special Reparation Docket No. 7598 for adjustment.

1937. UNITED STATES OF AMERICA *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.—Rate on smokeless powder from Iona Island, N. Y., to Washington, D. C. *Truman H. Newberry*, Secretary of the Navy, for complainant. *George Stuart Patterson* for Pennsylvania Railroad Company. January 3, 1910. Dismissed on motion of complainant; complaint satisfied.

1975. NATIONAL CONFECTIONERS' ASSOCIATION ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Classification of candy and other confectionery in Western Classification Territory. *Frank F. Reed* and *Edward S. Rogers* for complainants. *Wm. Ellis*, *F. G. Wright*, *S. H. West*, and *Roy F. Britton* for defendants. November 26, 1909. Dismissed on motion of complainant.

1999. JOHN W. COCKERHAM, jr., *v.* KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.—Rate on cotton seed from Stillwater, Okla., to Shreveport, La. *Emerson Bentley* for complainant. *W. Moore*, *Fred H. Wood*, *Robert Dunlap*, and *T. J. Norion* for defendants. August 5, 1909. Transferred to Special Reparation Docket No. 7020 for adjustment.

2015. BLACK ROCK MANUFACTURER'S ASSOCIATION, *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.—Rates on coal and coke from Pittsburgh district, Pa., to Black Rock section of Buffalo, N. Y. *Cox*, *Kimball & Stowe* for complainant. *George Stuart Patterson*, *Clyde Brown*, and *H. J. Adams* for defendants. November 24, 1909. Dismissed on motion of complainant; complaint satisfied.

2031. ROBERT A. HAMMOND *v.* SOUTHERN EXPRESS COMPANY ET AL.—Misrouting of shipment of oranges from White City, Fla., to Boston, Mass. *Joseph Walsh* for complainant. *George Stuart Patterson*, *Alex. St. Clair Abrams*, *Ed. Baxter*, *Sidney F. Andrews* and *E. G. Buckland* for defendants. November 9, 1909. Dismissed on motion of complainant; complaint satisfied.

2040. PLUMMER LUMBER COMPANY *v.* MOBILE & OHIO RAILROAD COMPANY.—Rates on hardwood lumber from points in Alabama to points in Missouri. *Theodore Plummer* for complainant. *Ed. Baxter* and *Sidney F. Andrews* for defendant. September 28, 1909. Dismissed on motion of complainant.

2091. UNITED STATES OF AMERICA *v.* NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.—Rates on smokeless powder from Newport, R. I., to Washington, D. C. *H. L. Satterlee* for complainant. *Charles Heebner*, *E. G. Buckland*, *Wm. A. Parker*, and *Jackson E. Reynolds* for defendants. January 27, 1910. Discontinued on motion of complainant; complaint satisfied.

2121. OLD DOMINION COPPER MINING AND SMELTING COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Rates on coke from Fairmont, W. Va., to Globe, Ariz. *Wm. C. Crane* for complainant.

Hawkins & Franklin, Wm. A. Parker, F. C. Dillard, P. F. Dunne, C. W. Durbrow, W. F. Herrin, O. E. Butterfield, Clyde Brown, Eugene S. Ives, E. B. Peirce, and Baker, Botts, Parker & Garwood for defendants. January 31, 1910. - Dismissed on motion of complainant.

2170. *BERTHOLD & JENNINGS v. MOBILE & OHIO RAILROAD COMPANY ET AL.*—Lumber from Alabama points to Cairo, Ill., via Tuscaloosa, Ala., for dressing, etc., and reconsigned to Des Moines, Iowa. *R. Kasting* for complainant. *Sidney F. Andrews* for Mobile & Ohio Railroad Company. August 17, 1909. Transferred to Special Reparation Docket's Nos. 6760-6763 for adjustment.

2201. *JOHN BREUNER COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.*—Rate on furniture from New York to San Francisco. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, S. A. Lynde, C. W. Durbrow, and Wm. F. Herrin* for defendants. September 3, 1909. Dismissed on motion of complainant.

2203. *PACIFIC PURCHASING COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Rates on furniture from Grand Rapids, Mich., to Los Angeles, Cal. *J. O. Bracken* for complainant. *E. B. Peirce, Robert Dunlap, T. J. Norton, and E. W. Camp* for defendants. September 3, 1909. Dismissed on motion of complainant.

2218. *C. B. HAVENS & COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.*—Rates on slack coal from Frontenac, Kans., to Asylum Switch, Lincoln, Nebr. *H. T. Lemist* for complainant. *Robert Dunlap and T. J. Norton* for A. T. & S. F. Ry. Co. September 1, 1909. Transferred to Special Reparation Docket No. 5630 for adjustment.

2219. *STOCK YARDS COTTON & LINSEED MEAL COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Rates on cottonseed cake from Mineral Wells, Tex., to Princeton and Burdick, Kans. *F. L. Cook and R. D. Nathan* for complainant. *Robert Dunlap and T. J. Norton* for defendants. November 15, 1909. Dismissed on motion of complainant.

2223. *CHAFFIN COAL COMPANY v. CENTRAL INDIANA RAILWAY COMPANY ET AL.*—Routing of two cars of coal from Brazil, Ind., to Humboldt, Ill. *H. A. Chaffin* for complainant. *Blewett Lee* for Illinois Central Railroad Company. December 28, 1909. Dismissed on motion of complainant; complaint satisfied under Special Docket No. 5491.

2225. *RUCKER-FULLER DESK COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.*—Minimum weight on tables in excess of actual loading capacity from Grand Rapids, Mich., to San Francisco. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, E. N. Clark, P. F.*

Dunne, C. W. Durbrow, Wm. F. Herrin, Ed. Baxter, and R. Walton Moore for defendants. September 3, 1909. Dismissed on motion of complainant.

2245. *BEECHER & BARR v. CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.*—Estimated weights on piling from Providence Forge, Va., to Buffalo, N. Y. *G. G. Barr* for complainant. *E. D. Hotchkiss, Henry Wolf Bikle, George Stuart Patterson, Ed. Baxter, and R. Walton Moore* for defendants. July 14, 1909. Dismissed on motion of complainant; complaint satisfied.

2258. *LACHMAN BROTHERS v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Minimum weight on carload of tables from Mortonville, Pa., to San Francisco, in excess of actual loading capacity. *Lester G. Burnett and J. O. Bracken* for complainant. *Charles Heebner, E. C. Clifton, Robert Dunlap, T. J. Norton, and E. B. Peirce* for defendants. September 3, 1909. Dismissed on motion of complainants.

2260. *GEORGE H. FULLER DESK COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.*—Minimum weight on carload of tables from Grand Rapids, Mich., to San Francisco, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, Wm. Ellis, E. B. Peirce, P. F. Dunne, C. W. Durbrow, and Wm. F. Herrin* for defendants. September 3, 1909. Dismissed on motion of complainant.

2261. *GEORGE H. FULLER DESK COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.*—Minimum weight on carload of desks from Parkersburg, W. Va., to San Francisco. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, Ed. Baxter, R. Walton Moore, Wm. Ainsworth Parker, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, and Edward Barton* for defendants. September 3, 1909. Dismissed on motion of complainant.

2262. *GEORGE H. FULLER DESK COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.*—Minimum weight on carload of desks from Parkersburg, W. Va., to San Francisco, in excess of actual loading capacity. *J. O. Bracken* for complainant. *E. N. Clark, Chester M. Dawes, E. E. Whitted, Robert H. Widdicombe, Henry T. Rogers, F. C. Dillard, P. F. Dunne, C. W. Durbrow, and Wm. F. Herrin* for defendants. September 3, 1909. Dismissed on motion of complainant.

2278. *PACIFIC PURCHASING COMPANY v. SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.*—Minimum weight on carload of furniture from Grand Rapids, Mich., to Los Angeles, in excess of actual loading capacity. *J. O. Bracken* for complainant. *E. N. Clark, E. E. Whitted, Robert H. Widdicombe, James H. Campbell, W. R. Kelly, Chester M. Dawes, and Henry T. Rogers* for defendants. September 3, 1909. Dismissed on motion of complainant.

2280. KALAMAZOO TANK & SILO COMPANY *v.* MICHIGAN CENTRAL RAILROAD COMPANY ET AL.—Rate on silos (k. d.) from Kalamazoo, Mich., to Valders, Wis. *James E. Anderson* for complainant. August 3, 1909. Transferred to Special Reparation Docket No. 775 for adjustment.

2281. KALAMAZOO TANK & SILO COMPANY *v.* MICHIGAN CENTRAL RAILROAD COMPANY ET AL.—Rate on silos (k. d.) from Kalamazoo, Mich., to Wittenberg, Wis. *James E. Anderson* for complainant. *S. A. Lynde* for Chicago & North Western Railway Company. August 3, 1909. Transferred to Special Reparation Docket No. 775 for adjustment.

2283. CEDAR HILL COAL & COKE COMPANY *v.* COLORADO & SOUTHERN RAILWAY COMPANY ET AL.—Demurrage assessed on carload of coal from Greenville mine, Las Animas County, Colo., to Amarillo, Tex. *C. W. Durbin* for complainant. *S. M. Hudson, E. E. Whitted,* and *Robert H. Widdicombe* for defendants. Jan. 12, 1910. Dismissed for want of prosecution.

2300. RUCKER DESK COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Minimum weight on carload of desks from North Somerville, Mass., to San Francisco, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, E. B. Peirce, P. F. Dunne, C. W. Durbrow,* and *Wm. F. Herrin* for defendants. September 3, 1909. Dismissed on motion of complainant.

2301. RUCKER DESK COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Minimum weight on carload of desks from Herkimer, N. Y., to San Francisco, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, Wm. Ellis, P. F. Dunne, C. W. Durbrow,* and *Wm. F. Herrin* for defendants. September 3, 1909. Dismissed on motion of complainant.

2313. RUCKER-FULLER DESK COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Minimum weight on carload of desks from Somerville, Mass., to San Francisco, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, P. F. Dunne,* and *Wm. F. Herrin* for defendants. September 3, 1909. Dismissed on motion of complainant.

2314. GEORGE H. FULLER DESK COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Minimum weight on two carloads of desks from Grand Rapids, Mich., to San Francisco, in excess of actual loading capacity. *J. O. Bracken* for complainant. *E. N. Clark, T. L. Philips, E. B. Peirce, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin,* and *Henry T. Rogers* for defendants. September 3, 1909. Dismissed on motion of complainant.

2338. PEASE BROTHERS FURNITURE COMPANY *v.* SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.—Minimum weight on carload of chairs from Chicago to Los Angeles, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, W. R. Kelly, P. L. Williams, R. A. Brown, and E. B. Peirce* for defendants. September 3, 1909. Dismissed on motion of complainant.

2339. PEASE BROTHERS FURNITURE COMPANY *v.* SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.—Minimum weight on carload of desks from East Cambridge, Mass., to Los Angeles, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, W. R. Kelly, S. A. Lynde, and P. L. Williams* for defendants. September 3, 1909. Dismissed on motion of complainant.

2352. CROOKSTON LUMBER COMPANY *v.* LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.—Rate on lumber from Bemidji, Minn., to South Bend, Ind. *H. E. Reynolds* for complainant. *Wm. R. Begg* for Great Northern Railway Company. August 31, 1909. Transferred to Special Reparation Docket No. 7161 for adjustment.

2375. GEORGE H. FULLER DESK COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Minimum weight on carload of desks from Muskegon, Mich., to San Francisco, in excess of actual loading capacity. *J. O. Bracken* for complainant. *E. N. Clark, T. L. Philips, Henry T. Rogers, E. B. Peirce, F. C. Dillard, P. F. Dunne, C. W. Durbrow, and Wm. F. Herrin* for defendants. September 3, 1909. Dismissed on motion of complainant.

2376. RUCKER DESK COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Minimum weight on carload of desks in excess of actual loading capacity from North Somerville, Mass., to San Francisco. *J. O. Bracken* for complainant. *Robert Dunlap, T. J. Norton, and J. L. Coleman* for defendants. September 3, 1909. Dismissed on motion of complainant.

2406. BERTHOLD & JENNINGS ET AL. *v.* MOBILE & OHIO RAILROAD COMPANY ET AL.—Rate on yellow pine lumber from Harmons Siding, Ala., to Hamilton, Ontario. *R. Kasting and C. P. Jennings* for complainant. *F. F. Backus, Winston, Payne, Strawn & Shaw, Sidney F. Andrews, and Ed. Barter* for defendants. December 29, 1909. Discontinued; adjustment under rule 70, Tariff Circular 15-A.

2411. PHOENIX FURNITURE COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Minimum weight on carload of bedroom furniture in excess of actual loading capacity from York, Pa., to San Francisco. *J. O. Bracken* for complainant. *Robert Dunlap, T. J. Norton, J. L. Coleman, Henry Wolf Bikle, and George Stuart Patterson* for defendants. September 3, 1909. Dismissed on motion of complainant.

2412. **JOHN BREUNER COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.**—Minimum weight in excess of actual loading capacity on carload of furniture from Grand Rapids, Mich., to San Francisco. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, Wm. Ellis, P. F. Dunne, C. W. Durbrow, and Wm. F. Herrin* for defendants. September 3, 1909. Dismissed on motion of complainant.

2429. **J. M. OVERELL v. SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.**—Minimum weight on carload of chairs (k. d.) from Marietta, Ohio, to Los Angeles, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, W. R. Kelly, P. L. Williams, A. G. Briggs, and George W. Markham* for defendants. September 3, 1909. Dismissed on motion of complainant.

2431. **PEASE BROTHERS FURNITURE COMPANY v. SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.**—Minimum weight on carload of desks from Herkimer, N. Y., to Los Angeles, in excess of actual loading capacity. *J. O. Bracken* for complainant. *Wm. Ellis, N. H. Loomis, F. C. Dillard, W. R. Kelly, and P. L. Williams* for defendants. September 3, 1909. Dismissed on motion of complainant.

2432. **PEASE BROTHERS FURNITURE COMPANY v. SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.**—Minimum weight on carload of furniture from Indianapolis, Ind., to Los Angeles, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, S. A. Lynde, W. R. Kelly, and P. L. Williams* for defendants. September 3, 1909. Dismissed on motion of complainant.

2433. **PEASE BROTHERS FURNITURE COMPANY v. SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.**—Minimum weight on carload of furniture from Indianapolis, Ind., to Los Angeles, in excess of actual loading capacity. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, W. R. Kelly, P. L. Williams, and E. B. Peirce* for defendants. September 3, 1909. Dismissed on motion of complainant.

2434. **PEASE BROTHERS FURNITURE COMPANY v. SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.**—Minimum weight on two carloads of chairs from Grand Ledge, Mich., to Los Angeles, in excess of actual loading capacity. *J. O. Bracken* for complainant. *W. R. Kelly, N. H. Loomis, F. C. Dillard, P. L. Williams, A. G. Briggs, G. W. Markham, and Chester M. Dawes* for defendants. September 3, 1909. Dismissed on motion of complainant.

2454. **THE C. K. & N. COAL COMPANY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.**—Rate on coal from Round Oak Mine, Colo., to Washburn, Tex., reconsigned to Harrold, Tex. *C. W.*

Boardman, Platt & Littleton, and *Charles W. Bunn* for defendants. November 26, 1909. Dismissed on motion of complainant; complaint satisfied.

2737. *AMERICAN CREOSOTE WORKS (LIMITED) v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.*—Rates on cross-ties from Liberty, Miss., to Southport, La. *W. Scott Bryan* and *Charles Payne Fenner* for complainant. *Ed. Baxter* and *Sidney F. Andrews* for Illinois Central Railroad Company. December 22, 1909. Transferred to Special Reparation Dockets Nos. 8522 and 8523 for adjustment.

2743. *JOHN D. HOPKINS v. CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY.*—Stopping of refrigerator cars for the purpose of loading at Newman, Ill. *John D. Hopkins* for complainant. *Edward Colston*, *Hugh J. Graham*, *J. M. Scott*, and *John T. Todd* for defendant. December 6, 1909. Dismissed for want of prosecution.

2758. *P. B. MERRELL COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.*—Rates on fresh meats, packing-house products and live stock from Billings, Mont., to Omaha, Nebr., and various other points. *Charles D. Drayton* for complainant. *Alfred H. Bright*, *Wm. R. Begg*, *George W. Seevers*, *N. H. Loomis*, *F. C. Dillard*, *E. B. Peirce*, *Martin L. Clardy*, *James C. Jeffery*, and *Wm. Ellis* for defendants. September 14, 1909. Dismissed on motion of complainant; complaint satisfied.

2841. *MEIDINGER BROTHERS v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Rate on carload of threshers from Racine Junction, Wis., to Lemmon, S. Dak. *Leonard Brisley* for complainant. *Wm. Ellis* for defendants. November 5, 1909. Dismissed on motion of complainant; complaint satisfied.

2849. *HUERFANO COAL COMPANY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.*—Reconsignment charge on one carload of lump coal from McNally mine, Colo., to Stratford, Tex.; reconsigned to Liberal, Kans. *C. W. Durbin* for complainant. *E. E. Whitted* and *E. B. Peirce* for defendants. December 22, 1909. Dismissed on motion of complainant.

2871. *SWEDISH-AMERICAN TELEPHONE COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILROAD COMPANY ET AL.*—Rates on dry battery cells from Cleveland, Ohio, to Summerdale, Ill. *F. J. Ruehlman* for complainant. *S. A. Lynde* for Chicago & North Western Railway Company. December 18, 1909. Dismissed on motion of complainant.

2881. *COLORADO COAL TRAFFIC ASSOCIATION v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.*—Rates on coal from Walsenburg district in Colorado to certain points in Oklahoma. *C. W. Durbin* for complainant. *M. A. Spoonts*, *E. E. Whitted*, *Robert H. Widdicombe*,

and *E. B. Peirce* for defendants. December 13, 1909. Dismissed on motion of complainant; complaint satisfied.

2890. *SUNNYSIDE COAL MINING COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.*—Rates on coal from Walsenburg district in Colorado to points on the Union Pacific Railroad Company in Kansas. *C. W. Durbin* for complainant. October 15, 1909. Dismissed on motion of complainant.

2922. *ALBERT DICKINSON COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Rates on grass seed from Manning, Iowa, to Chicago, Ill. *Nathan Dickinson* for complainant. *Wm. Ellis* for defendant. December 17, 1909. Transferred to Special Reparation Docket for adjustment.

2938. *PLYMOUTH PARLOR FRAME COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Rates on logs from Spur, near Randville, Mich., to Plymouth, Wis. *R. R. Schover* for complainant. *Wm. Ellis* for defendant. December 17, 1909. Transferred to Special Reparation Docket for adjustment.

2988. *NATIONAL PETROLEUM ASSOCIATION ET AL. v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.*—Refusal to accept L. C. L. shipments of petroleum and its products at Hannibal, Mo., and Dubuque, Iowa, except on certain days of the week. *C. D. Chamberlain* and *Frank B. Fetter* for complainants. *Chester M. Dawes* for defendant. December 7, 1909. Dismissed on motion of complainant; complaint satisfied.

REPARATION CASES DISPOSED OF BY THE COMMISSION IN
FORMAL BUT UNREPORTED DECISIONS DURING THE TIME
COVERED BY THIS VOLUME.

2484. IOLA PORTLAND CEMENT COMPANY *v.* MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.—Unreasonable rate on cement from Iola, Kans., to Gila, Ariz. *W. J. Sterling* for complainant. *James Hagerman, Joseph M. Bryson, W. F. Herrin, F. C. Dillard, P. F. Dunne, C. W. Durbrow, and Baker, Botts, Parker & Garwood* for defendants. November 23, 1909. Reparation awarded for \$153.06.

2615. OLIVE-STERNEBERG LUMBER COMPANY *v.* TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.—Unreasonable rate on lumber from Olive, Tex., to Deering, Ill. *F. W. Sternenberg, jr.*, for complainant. *T. G. Beard, William Ellis, W. B. Groseclose, and J. W. Allen* for defendants. November 24, 1909. Reparation awarded for \$9.60.

2840. J. B. CLOW & SONS *v.* PENNSYLVANIA COMPANY ET AL.—Unreasonable rate on cast-iron pipe from Newcomerstown, Ohio, to Aberdeen, S. Dak. *A. M. Tufts* for complainant. *William Hodgdon, William Ellis, and H. S. Noble* for defendants. November 24, 1909. Reparation awarded for \$14.88.

2221. ACME CEMENT PLASTER COMPANY *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.—Unreasonable rate on wall plaster from Marlow, Okla., to Amsterdam, N. Y. *John B. Daish* for complainant. *E. B. Peirce, W. F. Dickinson, and H. L. Childs* for defendants. November 24, 1909. Reparation awarded for \$72.60.

2579. J. I. LAMB COMPANY *v.* CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.—Unreasonable rate on apples from St. Joseph, Mo., to La Crosse, Wis. *J. I. Lamb* for complainant. *A. G. Briggs, George W. Markham, and William Ellis* for defendants. November 24, 1909. Reparation awarded for \$14.88.

2489. LANGENBERG BROTHERS & COMPANY *v.* WABASH RAILROAD COMPANY.—Unreasonable rate on corn from Bingham, Iowa, to St. Charles, Mo. *H. H. Langenberg* for complainant. *W. C. Maxwell* for defendant. November 24, 1909. Reparation awarded for \$45.

2616. NORTHERN WOOD COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.—Unreasonable rate on wood from Oconto,

Wis., to Evanston, Ill. *F. L. McLaughlin* for complainant. *William Ellis* for defendant. Reparation awarded for \$5.21.

2717. *L. J. POMEROY & COMPANY v. WABASH RAILROAD COMPANY*.—Wrongful reconsignment charge collected at Chicago, Ill. *L. J. Pomeroy* for complainant. *W. C. Maxwell* for defendant. November 24, 1909. Reparation awarded for \$77.09.

2426. *NORTHWESTERN IRON COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on pig iron from Mayville, Wis., to West Chicago, Ill. *C. N. Turner* for complainant. *William Ellis* and *T. E. Learned* for defendants. November 24, 1909. Reparation awarded for \$54.38.

2553. *MARSHALL-WELLS HARDWARE COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on barbed wire from De Kalb, Ill., to Ismay, Mont. *C. F. Rowe* for complainant. *William Ellis*, *R. M. Calkins*, and *B. H. Harris* for defendants. November 24, 1909. Reparation awarded for \$29.65.

2070. *J. E. STEWART PRODUCE COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on potatoes from Spring Valley, Minn., to Muskogee, Okla. *J. E. Stewart* for complainant. *William Ellis*, *James Hagerman*, and *Joseph M. Bryson* for defendants. November 24, 1909. Reparation awarded for \$18.

2559. *JULIUS KESSLER & COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on whisky from Tyrone, Ky., to Flagstaff, Ariz. *C. W. Krebs* for complainant. *Ed. Baxter*, *Sidney F. Andrews*, *Robert Dunlap*, *T. J. Norton*, and *C. H. Stinson* for defendants. November 24, 1909. Reparation awarded for \$8.17.

2372. *AMERICAN SAND & GRAVEL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on crushed concrete gravel from Fontana, Wis., to Chicago, Ill. *Parker M. Lewis* for complainant. *William Ellis* and *H. Windsor* for defendants. November 24, 1909. Reparation awarded for \$892.71.

2165. *DODDS LUMBER COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY*.—Unreasonable rate on lumber from Little Rock, Ark., to Council Bluffs, Iowa. *E. H. Westerfield* for complainant. *E. B. Peirce* for defendant. November 24, 1909. Reparation awarded for \$43.88.

2200. *OHIO IRON & METAL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY*.—Unreasonable rate on scrap iron from Minneapolis, Minn., to Beaver Dam, Wis. *S. J. Posen* for complainant. *William Ellis* for defendant. November 24, 1909. Reparation awarded for \$200.19.

2543. *MUTUAL WHEEL COMPANY v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.*—Unreasonable rate

on hubs from Scottsburg, Ind., to Moline, Ill. *J. A. Condo* for complainant. *Wm. Hodgdon*, *Charles B. Fernald*, and *William Ellis* for defendants. November 24, 1909. Reparation awarded for \$34.20.

2678. *AMERICAN CIGAR COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rates on box shoofs from Cleveland, Ohio, to Watertown, Wis. *W. R. Perkins* for complainant. *William Ellis*, *Clyde Brown*, and *O. E. Butterfield* for defendants. November 24, 1909. Reparation awarded for \$17.

2883. *ARMOUR & COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on fresh meat from Sioux City, Iowa, to Gary, Ind. *C. O. Frisbie* for complainant. *William Ellis* and *C. W. Stinson* for defendants. November 24, 1909. Reparation awarded for \$39.81.

2817. *NATIONAL PAPER MILLS & FILLER COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on egg-case fillers from Tama, Iowa, to Altamont and East St. Louis, Ill. *C. O. Frisbie* for complainant. *William Ellis* and *W. C. Maxwell* for defendants. November 24, 1909. Reparation awarded for \$37.97.

2845. *WESTERN LIME & CEMENT COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on lime from Sherwood, Wis., to Hollandale, Wis. *Charles Weiler* for complainant. *William Ellis* and *F. B. Bowes* for defendants. November 24, 1909. Reparation awarded for \$6.

2612. *WINONA MALTING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on bulk malt from Winona, Minn., to Kansas City, Mo. *H. E. Blair* for complainant. *William Ellis* for defendant. November 24, 1909. Reparation awarded for \$31.62.

2700. *AMERICAN HIDE & LEATHER COMPANY v. PENNSYLVANIA COMPANY ET AL.*—Unreasonable rate on green salted hides from Allegheny, Pa., to Merrill, Wis. *George A. Hill* for complainant. *William Hodgdon* and *William Ellis* for defendants. November 24, 1909. Reparation awarded for \$117.17.

2712. *ANDERSON VEHICLE COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on cutters from Jackson, Mich., to Fond du Lac, Wis. *Buell Anderson* for complainant. *Clyde Brown* and *William Ellis* for defendants. November 24, 1909. Reparation awarded for \$31.50.

2317. *CLINTON BRIDGE & IRON WORKS v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on bridge material from Clinton, Iowa, to West Salem, Wis. *G. M. Stephen* for complainant. *William Ellis* for defendant. November 23, 1909. Reparation awarded for \$23.91.

1957. *F. G. HAWKINSON v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY*.—Wrongful cancellation of concentration privilege on broom corn at McPherson, Kans. *Grattan & Grattan* and *Frank O. Johnson* for complainant. *E. B. Peirce* and *S. H. Johnson* for defendant. November 24, 1909. Reparation awarded for \$185.36.

2724. *INTERNATIONAL HARVESTER COMPANY OF AMERICA v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on agricultural implements from Chicago, Ill., to Lewiston, Mont. *F. B. Montgomery* for complainant. *William Ellis* and *R. M. Calkins* for defendants. November 24, 1909. Reparation awarded for \$104.70.

2782. *DELRAY SALT COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.*—Unreasonable rate on salt from Junction yard, Detroit, Mich., to Delavan, Wis. *Joseph P. Tracy* for complainant. *William Ellis* and *Clyde Brown* for defendants. November 24, 1909. Reparation awarded for \$29.66.

2793. *KETCHUM & GASTON COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on wagon boxes from Eau Claire, Wis., to Marshalltown, Iowa. *E. S. Ketchum* for complainant. *William Ellis* and *George W. Seevers* for defendants. November 24, 1909. Reparation awarded for \$17.99.

2017. *BLAKE, MOFFETT & TOWNE v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on paper from Munising, Mich., to Los Angeles, Cal. *A. G. Towne* for complainant. *William Ellis*, *H. A. St. John*, *W. W. Walker*, *Robert Dunlap*, and *T. J. Norton* for defendants. November 26, 1909. Reparation awarded for \$41.15.

2178. *ACME CEMENT PLASTER COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY*.—Unreasonable rate on wall plaster from East St. Louis, Ill., to Paducah, Ky. *John B. Daish* for complainant. *Ed. Barter* and *Sidney F. Andrews* for defendant. November 24, 1909. Reparation awarded for \$35.

2316. *MINNEAPOLIS DRY GOODS COMPANY v. WISCONSIN CENTRAL RAILWAY COMPANY ET AL.*—Unreasonable rates on furniture from Piqua, Ohio, to Minneapolis, Minn. *Leonard Brisley* for complainant. *C. B. Fernald* and *Alfred H. Bright* for defendants. November 26, 1909. Reparation awarded for \$49.22.

2403. *ARMOUR CAR LINES v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.*—Unreasonable rate on ice from Armour, Mo., to Willow Springs, Mo., via Kansas City, Kans. *C. J. Faulkner, jr.*, and *Alfred R. Urion* for complainant. *E. B. Peirce*, *Hale Holden*, and *George H. Crosby* for defendants. November 25, 1909. Reparation awarded for \$226.02.

2440. **MEMPHIS FREIGHT BUREAU v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.**—Unreasonable rate on cotton-seed meal from Kennett, Mo., to Montgomery, Ala. *T. K. Riddick* for complainant. *Wallace T. Hughes* and *Sloss Baxter* for defendants. December 6, 1909. Reparation awarded for \$42.06.

2448. **PEERLESS AGENCIES COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.**—Unreasonable rate on wood mantels from Buffalo, N. Y., to San Francisco, Cal. *J. O. Bracken* for complainant. *Robert Dunlap*, *T. J. Norton*, and *E. W. Camp* for defendants. November 24, 1909. Reparation awarded for \$12.30.

2449. **PEERLESS AGENCIES COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.**—Unreasonable rate on wood mantels from Baltimore, Md., to San Francisco, Cal. *J. O. Bracken* for complainant. *Robert Dunlap*, *T. J. Norton*, and *E. W. Camp* for defendants. November 24, 1909. Reparation awarded for \$31.50.

2450. **PEERLESS AGENCIES COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.**—Unreasonable rate on wood mantels from Buffalo, N. Y., to San Francisco, Cal. *J. O. Bracken* for complainant. *Robert Dunlap*, *T. J. Norton*, and *E. W. Camp* for defendants. November 24, 1909. Reparation awarded for \$30.

2478. **ACME CEMENT PLASTER COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.**—Unreasonable rate on cement plaster from Marlow, Okla., to Perth Amboy, N. J. *John B. Daish* for complainant. *E. B. Peirce*, *Wallace T. Hughes*, *S. W. Fordyce, jr.*, and *Thomas W. White* for defendants. November 24, 1909. Reparation awarded for \$57.

2479. **ACME CEMENT PLASTER COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.**—Unreasonable rates on cement plaster from Marlow, Okla., to Phoebus, Va. *John B. Daish* for complainant. *E. B. Peirce* and *Wallace T. Hughes* for defendants. November 24, 1909. Reparation awarded for \$132.

2530. **HAMILTON GRANGE No. 57 v. PENNSYLVANIA RAILROAD COMPANY ET AL.**—Unreasonable rates on coal from Bernice, Pa., to Newtown, N. J. *Henry Davis* and *Edwin R. Collins* for complainant. *Edgar H. Boles* and *George Stuart Patterson* for defendants. November 26, 1909. Reparation awarded for \$51.16.

2563. **DETROIT CHEMICAL COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.**—Unreasonable rate on sulphuric acid from Detroit, Mich., to Dollar Bay, Mich. *Edward S. Davis* for complainant. *F. R. Bolles*, *William Ellis*, and *McPherson, Bills & Streeter* for defendants. November 26, 1909. Reparation awarded for \$40.69.

2632 and 2633. **ACME CEMENT PLASTER COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.**—Unreasonable rates on cement plaster
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ter from Laramie, Wyo., passing through a portion of Nebraska, to Sheridan, Wyo. *John B. Daish* for complainant. *Edson Rich* for defendants. November 24, 1909. Reparation awarded for \$96.

2674. *POLSON IMPLEMENT COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rates on bobsleds from Fond du Lac, Wis., to Colville, Wash. *J. L. Briggs* for complainant. *William Ellis* and *W. P. Kenney* for defendants. November 26, 1909. Reparation awarded for \$104.40.

2816. *SIMONDS SHIELDS GRAIN COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on millet seed from Seymour, Iowa, to Kansas City, Mo. *S. J. Simonds* for complainant. *William Ellis* for defendant. November 26, 1909. Reparation awarded for \$47.40.

2837. *TUTHILL SPRING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on wagon springs from Chicago, Ill., to certain points in Wisconsin. *F. H. Tuthill* for complainant. *William Ellis* for defendant. November 26, 1909. Reparation awarded for \$23.89.

2254. *HILL-INGHAM LUMBER COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.*—Misrouting lumber shipped from Perry, Okla., and destined to Iola, Kans. *Kirkpatrick & Schwind* for complainant. *Fred H. Wood* for defendants. December 7, 1909. Reparation awarded for \$24.99.

2371. *ACME CEMENT PLASTER COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on wall plaster from Rapid City, S. Dak., to Okaton, S. Dak., as part of a through shipment from Laramie, Wyo. *John B. Daish* for complainant. *William Ellis* for defendants. December 7, 1909. Reparation awarded for \$39.

2668. *H. J. HEINZ COMPANY v. NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.*—Unreasonable rates on salt from Cleveland, Ohio, to Muscatine, Iowa. *C. O. Johnson* for complainant. *James Webster*, *F. E. Learned*, and *William Ellis* for defendants. November 26, 1909. Reparation awarded for \$58.77.

2167. *WELLS-HIGMAN COMPANY v. GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.*—Misrouting baskets shipped from Traverse City, Mich., and destined to Chicago, Ill. *H. C. Higman* for complainant. *J. H. Campbell*, *F. W. Steven*, and *William Ellis* for defendants. November 26, 1909. Reparation awarded for \$23.

2328. *MOORE MERCANTILE COMPANY v. CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY ET AL.*—Unreasonable rate on potatoes from Moore, Mont., to Kansas City, Mo. *E. F. Hensey* for complainant. *R. M. Calkins* and *William Ellis* for defendants. December 7, 1909. Reparation awarded for \$455.47.

2193. *E. A. HOWARD & COMPANY v. NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.*—Unreasonable rate on hard-wood lumber from Union City, Tenn., to San Francisco, Cal. *Lester G. Burnett* and *J. O. Bracken* for complainant. *E. B. Peirce, E. W. Camp, F. C. Dillard*, and *C. W. Durbrow* for defendants. November 26, 1909. Reparation awarded for \$43.20.

2777. *LANING-HARRIS COAL & GRAIN COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.*—Unreasonable minimum carload weights on shipments of oats from Kansas City, Mo., to Fort Worth, Tex. *C. W. Durbin* for complainant. *E. B. Peirce* and *W. T. Hughes* for defendants. December 7, 1909. Reparation awarded for \$114.39.

2467. *UNION SAND & MATERIAL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on cement and plaster from St. Louis, Mo., to Linby, Iowa. *C. A. Cunningham* for complainant. *William Ellis* and *C. N. Stinson* for defendants. November 24, 1909. Reparation awarded for \$16.50.

2701. *KINGMAN & COMPANY v. CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.*—Unreasonable rate on vehicles from Cincinnati, Ohio, to Richland Center, Wis. *W. J. Evans* for complainant. *Edward Colston, G. W. Kretzinger*, and *William Ellis* for defendants. November 24, 1909. Reparation awarded for \$49.98.

2599. *SOUTHERN SEWER PIPE COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.*—Unreasonable rate on sewer pipe from St. Louis, Mo., to Coleanor, Ala. *J. A. Millsom* for complainant. *Perkins Barter* for defendant. December 13, 1909. Reparation awarded for \$50.10.

2921. *CLINTON BRIDGE & IRON COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on iron bridge material from Clinton, Iowa, to Durand, Wis. *G. M. Stephen* for complainant. *William Ellis* for defendant. December 13, 1909. Reparation awarded for \$36.35.

2212. *ACME CEMENT PLASTER COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.*—Unreasonable minimum weight applied on wall plaster shipped from Marlow, Okla., to Logan, Kans. *J. B. Daish* for complainant. *W. F. Dickinson, E. B. Peirce*, and *C. C. P. Rausch* for defendants. December 7, 1909. Reparation awarded for \$20.50.

2188. *VIRGINIA-CAROLINA CHEMICAL COMPANY v. SEABOARD AIR LINE RAILWAY ET AL.*—Unreasonable rate on ammonium sulphate fertilizer from Ensley, Ala., to Gainesville, Fla. *H. W. B. Glover* for complainant. *C. R. Capps* and *C. B. Compton* for defendants. December 14, 1909. Reparation awarded for \$26.27.

2393 and 2408. **ACME CEMENT PLASTER COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.**—Unreasonable rate on wall plaster from Marlow, Okla., to Perth Amboy, N. J. *John B. Daish* for complainant. *E. B. Peirce, W. F. Dickinson, M. F. Watts, John H. Clarke, Jackson E. Reynolds, and John G. Williams* for defendants. December 7, 1909. Reparation awarded for \$162.

2733. **RED WING LINSEED COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.**—Unreasonable rate on oil from Red Wing, Minn., to La Crosse, Wis. *Charles E. Betcher* for complainant. *William Ellis* for defendant. December 14, 1909. Reparation awarded for \$11.83.

2658. **ALBERT MILLER & COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable charges on potatoes from Pardeeville, Wis., to Chicago, Ill. *E. P. Miller* for complainant. *William Ellis, F. D. Bowes, and J. L. Hawley* for defendants. December 14, 1909. Dismissed.

2792. **MILWAUKEE BEER COMPANY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.**—Excessive minimum weight applied on carload shipments of empty beer packages from El Paso, Tex., to Milwaukee, Wis. *B. J. Nockin* for complainant. *J. W. Allen, E. L. Sargent, W. B. Groschlose, and William Ellis* for defendants. December 14, 1909. Reparation awarded for \$12.25.

2318. **ACME CEMENT PLASTER COMPANY v. GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.**—Unreasonable rate on crushed gypsum rock from Grand Rapids, Mich., to Cincinnati, Ohio. *John B. Daish* for complainant. *John Fitzgerald and Sidney F. Andrews* for defendants. December 14, 1909. Reparation awarded for \$194.35.

2688. **DREYFUS BROTHERS v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Unreasonable rate on candy from Montgomery, Ala., to Lake Charles, La. *D. R. Dreyfus* for complainant. *Ed. Baxter, Perkins Baxter, and E. L. Sargent* for defendants. December 14, 1909. Reparation awarded for \$1.09.

2663. **B. D. ANGUISH v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable rate on turnips from Delavan, Wis., to Terre Haute, Ind. *B. D. Anguish* for complainant in person. *William Ellis and E. B. Peirce* for defendants. December 14, 1909. Reparation awarded for \$19.20.

2920. **INDEPENDENT BREWING & MALT COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.**—Unreasonable rate on malt from Davenport, Iowa, to Omaha, Nebr. *Fred. Zoller* for complainant. *William Ellis* for defendant. December 13, 1909. Reparation awarded for \$71.75.

2937. **W. B. JORDAN & SONS COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable rate on flour from Fargo, N. Dak., to Miles City, Mont. *H. V. Bailey* for complainant. *William Ellis* for defendant. December 13, 1909. Reparation awarded for \$43.50.

2810. **UNITED STATES CAST IRON PIPE & FOUNDRY COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.**—Overcharge on shipment of cast-iron pipe from Cleveland, Ohio, to Wessington Springs, S. Dak. *Charles R. Rauth* for complainant. *William Ellis, Ed. Baxter, Perkins Baxter, R. Walton Moore,* and *O. E. Butterfield* for defendants. January 4, 1910. Reparation awarded for \$13.50.

2720. **FOSTER LUMBER COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.**—Unreasonable rates on lumber from West Lake, La., to Towner, Colo. *L. F. Bird* for complainant. *H. J. Campbell* and *B. M. Flippin* for defendants. January 3, 1910. Reparation awarded for \$120.06.

2889. **E. P. STACY & SONS v. EVANSVILLE & TERRE HAUTE RAILROAD COMPANY ET AL.**—Unreasonable rate on watermelons from Vincennes, Ind., to Owatonna, Minn. *C. S. Stacy* for complainant. *E. B. Peirce* and *William Ellis* for defendants. January 3, 1910. Reparation awarded for \$46.72.

2934. **GAMBLE-ROBINSON COMMISSION COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable rate on watermelons from Cone, Iowa, to New Prague, Minn. *Harry L. Robinson* for complainant. *William Ellis* and *S. G. Lutz* for defendants. January 3, 1910. Reparation awarded for \$19.24.

2926. **J. S. ROWELL MANUFACTURING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.**—Unreasonable rates on agricultural implements from Beaver Dam, Wis., to Minneapolis, Minn. *E. D. Stacy* for complainant. *William Ellis* for defendant. January 3, 1910. Reparation awarded for \$133.09.

2989. **AUSTIN MANUFACTURING COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.**—Unreasonable rates on rock-crushing machinery from Harvey, Ill., to Groos, Mich. *H. S. Marlay* for complainant. *A. P. Humburg, William Ellis,* and *T. D. Meed* for defendants. January 3, 1910. Reparation awarded for \$48.84.

2567. **MENASHA WOODENWARE COMPANY v. WISCONSIN CENTRAL RAILWAY COMPANY ET AL.**—Unreasonable rate on wooden pails from Menasha, Wis., to Smithville, Ohio. *G. M. Stephen* for complainant. *Alfred H. Bright, F. B. Learned,* and *C. B. Fernald* for defendants. January 3, 1910. Reparation awarded for \$11.55.

2572. **MENASHA WOODENWARE COMPANY v. WISCONSIN CENTRAL RAILWAY COMPANY ET AL.**—Unreasonable rate on wooden pails from

Menasha, Wis., to New Orleans, La. *G. M. Stephen* for complainant. *A. P. Humburg, S. A. Lynde, Alfred H. Bright, and Ed. Baxter* for defendants. January 3, 1910. Reparation awarded for \$62.16.

2573 and 2604. *MENASHA WOODENWARE COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Unreasonable rate on wooden pails from Menasha, Wis., to New Orleans, La. *G. M. Stephen* for complainant. *A. P. Humburg, S. A. Lynde, Alfred H. Bright, and Ed. Baxter* for defendants. January 3, 1910. Reparation awarded for \$13.40.

2574. *MENASHA WOODENWARE COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Unreasonable rate on wooden pails from Menasha, Wis., to Battle Creek, Mich. *G. M. Stephen* for complainant. *S. A. Lynde and O. E. Butterfield* for defendants. January 3, 1910. Reparation awarded for \$26.24.

2605. *MENASHA WOODENWARE COMPANY v. WISCONSIN CENTRAL RAILWAY COMPANY ET AL.*—Unreasonable rate on barrels from Menasha, Wis., to Toledo, Ohio. *G. M. Stephen* for complainant. *Alfred H. Bright, F. G. Learned and O. E. Butterfield* for defendants. January 3, 1910. Reparation awarded for \$17.15.

2606. *MENASHA WOODENWARE COMPANY v. CHICAGO & NORTH-WESTERN RAILWAY COMPANY ET AL. (THREE CASES).*—Unreasonable rate on wooden pails from Menasha, Wis., to Erie, Pa., Zanesville, Ohio, and Pittsburg, Pa. *G. M. Stephen* for complainant. *S. A. Lynde, McPherson, Bills & Streeter, and O. E. Butterfield* for defendants. January 3, 1910. Reparation awarded for \$51.41.

2241. *SOUTHERN BITULITHIC COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on paving brick from Graves Mines, Ala., to Baton Rouge, La. *W. B. Campbell Pilcher* for complainant. *Sidney F. Andrews* for defendants. January 3, 1910. Reparation awarded for \$71.28.

2370. *SEATTLE FROG & SWITCH COMPANY v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.*—Unreasonable rate on rails and fastenings from Cumberland, Md., to Seattle, Wash. No appearance for complainant. *George T. Reid* for defendants. January 4, 1910. Reparation awarded for \$306.90.

2590. *UNION MATCH COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on matches from Duluth, Minn., to Salt Lake City, Utah. *John B. Heinnick* for complainant. *William Ellis, F. B. Wright, and Charles L. Kennedy* for defendants. January 4, 1910. Reparation awarded for \$33.16.

2748. *UNION COAL & COKE COMPANY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable reconsignment charge on coal from Pryor, Colo., to Amarillo, Tex. *C. W. Durbin* for com-

plainant. *E. E. Whitted* and *R. H. Widdicombe* for defendants. January 4, 1910. Reparation awarded for \$3.

2799. *ALBERT DICKINSON COMPANY v. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY ET AL.*—Unreasonable rate on millet seed and flaxseed from Minneapolis, Minn., to Petaluma, Cal. *E. G. Loser* and *R. M. Dean* for complainant. *H. M. Pearce* for defendants. January 4, 1910. Reparation awarded for \$136.64.

2727. *JOSEPH A. GODDARD COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.*—Misrouting shipments of cheese from Sheboygan, Wis., to Muncie, Ind. *G. M. Stephen* for complainant. *F. P. Eyman* for defendants. January 3, 1910. Reparation awarded for \$59.11.

2378. *WHITE BROTHERS v. SOUTHERN PACIFIC COMPANY ET AL.*—Alleged unreasonable rates on hardwood lumber from points east of the Mississippi River to Pacific coast terminals. *Lester G. Burnett* and *J. O. Bracken* for complainant. *T. J. Norton*, *E. W. Camp*, *E. B. Peirce*, *F. C. Dillard*, and *C. W. Durbrow* for defendants. January 3, 1910. Dismissed on account of insufficiency of evidence.

2576. *WHITE BROTHERS v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.*—Alleged unreasonable rate on hardwood lumber from Jonesboro, Ark., to San Francisco, Cal. *Lester G. Burnett* and *J. O. Bracken* for complainant. *T. J. Norton*, *E. W. Camp*, and *E. B. Peirce* for defendants. January 3, 1910. Dismissed on the ground that shipments moved prior to date of the Burgess complaint.

2491. *SUPERIOR CHARCOAL IRON COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Unreasonable rate on charcoal pig iron from Elk Rapids, Mich., to Hamilton and Brantford, in the province of Ontario, Canada. *H. J. Bennett* and *O'Brien & Campbell* for complainant. *Charles McPherson*, *John W. Loud*, and *E. W. Beatty* for defendants. December 14, 1909. Reparation awarded for \$362.72.

2286. *CANTON FERTILIZER & CHEMICAL COMPANY v. WHEELING & LAKE ERIE RAILROAD COMPANY ET AL.* 2369. *SAME v. PENNSYLVANIA COMPANY ET AL.* 2435. *SAME v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.*—Unreasonable rates on phosphate rock from Tennessee mines to Canton, Ohio. *I. N. Lowenstein* and *Charles Seeman* for complainant. *Edward Colston*, *William G. Dearing*, *B. A. Worthington*, *O. E. Butterfield*, *Morrison R. Waite*, and *Edward Barton* for defendants. January 10, 1910. Reparation awarded for \$296.19.

2326. *ABRAHAM D. RADINSKY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rates on rags from Pueblo, Colo., to Paraffin, Cal. *A. L. Vogt* for complainant. *E. E. Whitted*, *R. H.*

Widdicombe, N. H. Loomis, F. C. Dillard, C. C. Dorsey, and W. F. Herrin for defendants. January 10, 1910. Reparation awarded for \$311.40.

2672. *MASON GREGG GRAIN COMPANY v. WABASH RAILROAD COMPANY ET AL.*—Misrouting shipments of grain shipped from Kansas City, Mo., to Milwaukee, Wis. *John A. Wilson* for complainant. *William Ellis* for defendants. January 10, 1910. Reparation awarded for \$179.37.

1688. *BAYOU CITY RICE MILLS v. HOUSTON & TEXAS CENTRAL RAILROAD COMPANY ET AL.*—Unreasonable rate on clean rice from Houston, Tex., to Portland, Oreg. *P. H. McNemer* for complainant. *H. M. Garwood* and *C. G. Burnham* for defendants. January 10, 1910. Reparation awarded for \$329.94.

2614. *UPDIKE GRAIN COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on flaxseed from Council Bluffs, Iowa, to Minneapolis, Minn. *John A. Kuhn* for complainant. *William Ellis* for defendant. January 11, 1910. Reparation awarded for \$21.20.

2742. *SWIFT & COMPANY v. DENVER, NORTHWESTERN & PACIFIC RAILWAY COMPANY ET AL.*—Unreasonable rate on cattle from Granby, Colo., to Chicago, Ill. *Albert H. and Henry Veeder* for complainant. *Gerald Hughes, Hale Holden, and William Ellis* for defendants. January 11, 1910. Reparation awarded for \$307.02.

2877. *MARSHALL H. RICE v. MONTPELIER & WELLS RIVER RAILROAD ET AL.*—Alleged overcharge on granite building stone from Barre, Vt., to Kansas City, Mo. *Alfred A. Wild* for complainant. *C. D. Waters, John W. Loud, and C. E. Dewey* for defendants. January 10, 1910. Dismissed on account of claim being barred under section 16 of the act.

2852. *NORTH STAR WOOLEN MILL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on blankets from Minneapolis, Minn., to Chicago, Ill. *Park W. Peck* for complainant. *William Ellis, H. A. Taylor, H. Murray Andrews, Charles B. Fernald, O. E. Butterfield, Clyde Brown, Hugh L. Bond, jr., William C. Coleman, E. G. Buckland, and Edward D. Robbins* for defendants. January 10, 1910. Reparation awarded for \$49.36.

2689. *GULF LUMBER COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on sawmill machinery from Wausau, Wis., to Cravens, La. *P. L. Kershaw* for complainant. *William Ellis, T. J. Norton, and J. L. Coleman* for defendants. January 4, 1910. Reparation awarded for \$399.87.

2622. *JOS. SCHLITZ BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on beer from Milwaukee, Wis., to Globe, Ariz. *C. J. Bertschy* for complainant.

ant. *F. C. Dillard, J. P. Blair; Baker, Botts, Parker & Garwood; Ed. Baxter, R. Walton Moore, William Ellis, P. F. Dunne, C. W. Durbrow, W. W. W. Arthur, and F. G. Wright* for defendants. February 8, 1910. Reparation awarded for \$124.81.

2624. **PABST BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable rate on beer from Milwaukee, Wis., to Bisbee, Ariz. *Charles Zielke* for complainant. *William Ellis, E. B. Peirce, Hawkins & Franklin, F. G. Wright, and Wallace T. Hughes* for defendants. February 8, 1910. Reparation awarded for \$291.92.

2625. **PABST BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable rate on beer from Milwaukee, Wis., to Clifton, Ariz. *Charles Zielke* for complainant. *F. C. Dillard, J. P. Blair; Baker, Botts, Parker & Garwood; Ed. Baxter, R. Walton Moore, William Ellis, M. J. Egan, Hawkins & Franklin, W. W. W. Arthur, F. G. Wright, E. B. Peirce, and Wallace T. Hughes* for defendants. February 8, 1910. Reparation awarded for \$300.

2626. **PABST BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable rate on beer from Milwaukee, Wis., to Douglas, Ariz. *Charles Zielke* for complainant. *William Ellis, Hawkins & Franklin, E. B. Peirce, Wallace T. Hughes, and F. G. Wright* for defendants. February 8, 1910. Reparation awarded for \$248.26.

2627. **PABST BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable rate on beer from Milwaukee, Wis., to Safford, Ariz. *Charles Zielke* for complainant. *F. C. Dillard, J. P. Blair; Baker, Botts, Parker & Garwood; Ed. Baxter, R. Walton Moore, William Ellis, Wm. F. Herrin, P. F. Dunne, C. W. Durbrow, W. W. W. Arthur, and F. G. Wright* for defendants. February 8, 1910. Reparation awarded for \$24.80.

2585. **C. C. CLEMONS PRODUCE COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Unreasonable rate on potatoes from Birmingham, Mo., to Enid, Okla. *George T. Bell* for complainants. *William Ellis, F. G. Wright, E. B. Peirce, and F. C. Dumbek* for defendants. February 8, 1910. Reparation awarded for \$24.

2854. **WELCH-COOK COMPANY ET AL. v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.**—Unreasonable rate on cotton knit goods from Amsterdam, N. Y., to Cedar Rapids, Iowa. February 8, 1910. Reparation awarded for \$7.04. 2854. **WELCH-COOK COMPANY v. BOSTON & MAINE RAILROAD ET AL.**—Unreasonable rate on cotton knit goods from Lowell, Mass., to Cedar Rapids, Iowa. February 8, 1910. Reparation awarded for \$3.65. 2854. **F. G. LESLIE PAPER COMPANY v. THE LAKE SHORE & MICHIGAN SOUTHERN RAIL-**
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WAY COMPANY ET AL.—Unreasonable rate on pulp board from Elkhart, Ind., to St. Paul, Minn. February 8, 1910. Reparation awarded for \$8.27. 2854. *SAME v. CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.*—Alleged unreasonable rate on enameled book paper from Hamilton, Ohio, to St. Paul, Minn. *G. M. Stephen* for complainant. *E. B. Peirce, M. L. Bell, Wallace T. Hughes, and Winston, Payne, Straun & Shaw* for defendants. February 8, 1910. Dismissed on account of insufficiency of evidence.

2522. *MAGNER BROTHERS v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Excessive rate on whiting from Philadelphia, Pa., to San Francisco, Cal. *Samuel Magner* for complainant. *E. W. Camp* for defendants. February 8, 1910. Reparation awarded for \$1.54.

2621. *JOS. SCHLITZ BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on beer from Milwaukee, Wis., to Morenci, Ariz. *C. J. Bertschy* for complainant. *Hawkins & Franklin, E. B. Peirce, Wallace T. Hughes, F. G. Wright, and M. J. Egan* for defendants. February 8, 1910. Reparation awarded for \$309.03.

2623. *JOS. SCHLITZ BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—2623. *SAME v. SAME.*—Unreasonable rate on beer from Milwaukee, Wis., to Tucson and Bisbee, Ariz. *C. J. Bertschy* for complainant. *William Ellis, E. L. Sargent, Martin L. Clardy, James C. Jeffery, William F. Herrin, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Hawkins & Franklin, E. B. Peirce, F. G. Wright, W. W. W. Arthur, and Wallace T. Hughes* for defendants. February 8, 1910. Reparation awarded for \$304.08.

2251. *SOUTHERN BITULITHIC COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on paving brick from Groves Mines, Alabama, to Natchez, Miss. *W. B. Campbell Pilcher* for complainant. *Sidney F. Andrews* for defendants. February 8, 1910. Reparation awarded for \$19.

2740. *A. F. WILSON v. OREGON RAILROAD & NAVIGATION COMPANY ET AL.*—Unreasonable rate on potatoes from Imbler, Oreg., to Butler, Mo. *Clyde B. Aitchison* for complainant. *W. W. Cotton and James C. Jeffery* for defendants. February 9, 1910. Reparation awarded for \$36.04.

2902. *SHADBOLT & BOYD IRON COMPANY v. CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY ET AL.*—Unreasonable rate on lumber from Salem, Ind., to West Bend, Wis. *G. M. Stephen* for complainant. *S. A. Lynde* for defendants. February 8, 1910. Reparation awarded for \$7.71.

2628. *PABST BREWING COMPANY v. EL PASO & SOUTHWESTERN RAILROAD COMPANY ET AL.*—Unreasonable rate on empty beer pack-
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ages from Bisbee, Ariz., to Milwaukee, Wis. *Charles Zielke* for complainant. *E. B. Peirce, Wallace T. Hughes, William Ellis,* and *F. G. Wright* for defendants. February 14, 1910. Reparation awarded for \$253.69.

2629. *PABST BREWING COMPANY V. EL PASO & SOUTHWESTERN RAILROAD COMPANY ET AL.*—Unreasonable rate on empty beer packages from Bisbee, Ariz., to Milwaukee, Wis. *Charles Zielke* for complainant. *F. G. Wright, William Ellis, Hawkins & Franklin, E. B. Peirce,* and *Wallace T. Hughes* for defendants. February 14, 1910. Reparation awarded for \$266.95.

2630. *PABST BREWING COMPANY V. GILA VALLEY, GLOBE & NORTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on empty beer packages from Safford, Ariz., to Milwaukee, Wis. *Charles Zielke* for complainant. *William Ellis, F. G. Wright, F. C. Dillard,* and *W. W. W. Arthur* for defendants. February 14, 1910. Reparation awarded for \$124.54.

3026. *H. F. ROSS V. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on stock cattle from South Omaha, Nebr., to Kings, Ill. *H. F. Ross* for complainant in person. *William Ellis* for defendant. February 14, 1910. Reparation awarded for \$51.93.

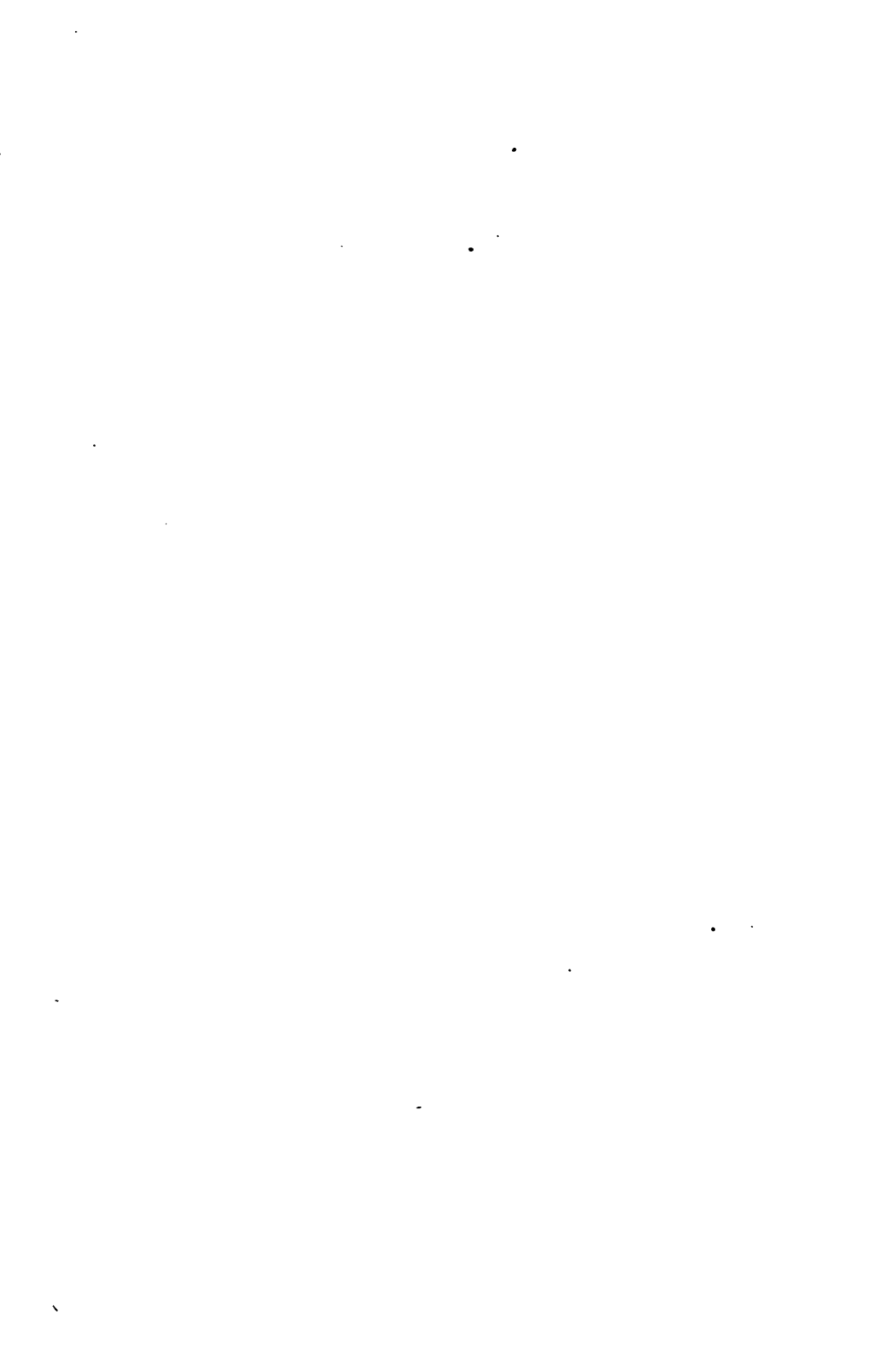
2913. *S. W. WHITTAKER V. GREAT NORTHERN RAILWAY COMPANY.*—Unreasonable rate on baled hay from Raynsford, Mont., to Spokane, Wash. *Railroad Commission of Montana, by its secretary,* for complainant. *J. D. Armstrong* for defendant. February 14, 1910. Reparation awarded for \$38.64.

NOTE.—The above 113 cases involve a total amount of \$10,725.75.

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APPENDIX A.

REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.



REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF
THE COMMISSION DURING THE TIME COVERED BY THIS
VOLUME.

1246. OSHKOSH LOGGING TOOL COMPANY ET AL. *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. September 10, 1909. Reparation of \$73.36, by Chicago, Milwaukee & St. Paul Railway Company, on shipments as per schedule filed, on account of excessive rates.

1243. OSHKOSH LOGGING TOOL COMPANY ET AL. *v.* CHICAGO AND NORTHWESTERN RAILWAY COMPANY ET AL. September 25, 1909. Reparation of \$155.83, by Chicago & Northwestern Railway Company, on shipments as per schedule filed, on account of excessive rates.

1958. CALIFORNIA COMMERCIAL ASSOCIATION *v.* WELLS, FARGO & COMPANY. November 23, 1909. Reparation of \$563.70, with interest, on express shipments from New York City, N. Y., to San Francisco, Cal., on account of unreasonable rate.

2830. VAN BRUNT MANUFACTURING COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. December 14, 1909. Reparation of \$200.45, with interest, by Chicago, Milwaukee & St. Paul Railway Company, on shipments of agricultural implements from Horicon Junction, Wis., to various points, on account of excessive rates.

1658. CARSTENS PACKING COMPANY *v.* OREGON RAILROAD & NAVIGATION COMPANY ET AL. January 10, 1910. Reparation of \$21.06, with interest, by Oregon Railroad & Navigation Company, on shipments of cattle from Nampa, Idaho, to Tacoma, Wash., on account of excessive rate.

1609. DARLING & COMPANY ET AL. *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. February 5, 1910. Reparation of \$1,975.74, with interest, to Buffalo Fertilizer Company; \$2,746.23, with interest, to American Agricultural Chemical Company; \$738.25, with interest, to Armour & Company; \$3,131.17, with interest, to Smith Agricultural Chemical Company; by Louisville & Nashville Railroad Company, on shipments of phosphate rock from Mount Pleasant and Centerville, Tenn., to various points, on account of excessive rates.

NOTE.—The above six cases involve a total amount of \$9,605.79.



APPENDIX B.

**COMPLAINTS IN WHICH REPARATION WAS
AUTHORIZED ON INFORMAL
PLEADINGS.**

DECEMBER 1, 1908, TO NOVEMBER 30, 1909.

**COMPLAINTS IN WHICH REPARATION WAS AUTHORIZED ON
INFORMAL PLEADINGS, DECEMBER 1, 1908, TO NOVEMBER
30, 1909.**

From December 1, 1908, to November 30, 1909, reparation was authorized by the Commission on informal pleadings in 2,171 cases, involving a total amount of \$426,612.83. For a detailed statement of such cases, see Appendix F of the Commission's Twenty-third Annual Report, pages 219-333.



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[The number in parenthesis following citation indicates page where paragraph occurs or subject is considered.]

ABSORPTION OF SWITCHING CHARGE.

The service performed by the Crane R. R. Co. for the complainant is that of a plant facility, the expense of which should be borne entirely by the complainant and which no railroad under the guise of the absorption of a switching charge may lawfully sustain. *Crane Iron Works v. C. R. R. Co. of N. J.* 514.

Cancellation of absorption of switching charges, in order to remove discrimination, not disturbed. *Minneapolis Threshing Machine Co. v. C., St. P., M. & O. Ry. Co.* 189.

ACT TO REGULATE COMMERCE.

The act to regulate commerce was clearly intended by the Congress to prescribe the only rule as to the regulation of interstate rates, and it should and does supersede different rules in prior statutes. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (247).

ADJUSTMENT.

Interveners insisted that to make order prayed for would make a discrimination against them. The matter of adjusting rates relatively to meet conditions that will arise after the reduction herein ordered is made rests primarily with the defendants. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (229).

Since filing complaint carriers voluntarily made an adjustment of the rates complained of. *Muskogee Traffic Bureau v. A., T. & S. F. Ry. Co.* 169.

ADMINISTRATIVE BODY.

As an administrative body the Commission can not stop at the surface of a transportation problem because its form and outward appearance are regular, but must reach the actual situation and examine its real substance. *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.* 338.

The general rule that a tribunal whose authority is invoked by a complaint must determine whether the subject-matter is within its jurisdiction before it may consider the merits of the controversy does not necessarily control an administrative body like this Commission. *Snook v. C. R. R. Co. of N. J.* 375.

ADMINISTRATIVE RULING.

Rule in Tariff Circular No. 17-A that carriers may not disregard instructions of shippers as to intermediate routing, except when tariff of initial line reserves right to dictate intermediate routing, affirmed. *Foster Lumber Co. v. A., T. & S. F. Ry. Co.* 292 (294).

ADMINISTRATIVE RULING—Continued.

- Rule 119, Bulletin 3, through rate in effect at time shipment starts is legal rate for entire movement, notwithstanding change in rate while shipment is in transit. *In re* Milling-in-Transit Rates 113.
- Rule 5b, Tariff Circular No. 17-A, in regard to making lowest combination on basing point without back haul, followed. *Crutchfield & Woolfolk v. L. & N. R. R. Co.* 302.
- Rule 5c, Tariff Circular 17-A, providing for making up of combination rates, followed. *Contact Process Co. v. N. Y. C. & St. L. R. R. Co.* 184 (185).
- Rule 215 of Conference Rulings Bulletin 4 followed. *Amos Rehberg & Co. v. Erie R. R. Co.* 508; *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 443, 548.
- Special Circular No. 6 construed. *Carstens Packing Co. v. O. S. L. R. R. Co.* 324.
- Rule 94, Bul. 3, affirmed. *In re* Commutation Tickets to School Children. 144.
- ADVANCE. See also PAST RATES.
- Rate on oil from Atlantic to Pacific coast advanced and shortly afterwards reduced. *Held*, Lower rate is competitive and no basis for finding higher rate to have been unreasonable for purpose of awarding reparation. *Fuller & Co. v. P. C. & Y. Ry. Co.* 594.
- Advance in rates on vegetables from Florida base points to the Ohio River approved. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552.
- Defendants have not suggested any circumstances or condition which would tend to justify an advance in the rate on agricultural implements from Horicon Junction, Wis., to Minnesota Transfer. *Van Brunt Manufacturing Co. v. C. M. & St. P. Ry. Co.* 195 (196).
- Rates on cotton-seed oil from Memphis to Louisville, Cincinnati, and Chicago, not found unreasonable, although lower rates between those points had been in effect for many years. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313.
- Advance in rate accompanied by increase in minimum, and subsequent reduction of rate but no change in minimum, no basis for reparation. *Liebold Co. v. D. L. & W. R. R. Co.* 503.
- Former rates forced down by competition, which competition has since ceased. Advanced rate not being shown unreasonable, complaint dismissed. *Schoenhofen Brewing Co. v. A. T. & S. F. Ry. Co.* 329.
- New York-Chicago base rate on gypsum rock advanced and subsequently voluntarily reduced. Reparation awarded on shipments made under higher rate. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.
- Rate long maintained, advanced, then reduced to old figure. Advanced rate not found unreasonable; reparation denied. *Pabst Brewing Co. v. C. M. & St. P. Ry. Co.* 359.
- A general advance approved as to Memphis without intending to be understood as justifying the advance as to other points. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (321).
- Former rates effective many years, and no evidence that they were not compensatory; advance condemned. *New Orleans Board of Trade v. L. & N. R. R. Co.* 231.
- Advance in hog rates condemned and previous rates ordered restored. *Corn Belt Meat Producers' Asso. v. C. B. & Q. R. R. Co.* 533.
- Commission no power to require increase of rate. *Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (102).
- By carriers in order to remove discrimination justified. *Lautz Bros. & Co. v. L. V. R. R. Co.* 167.
- Effect of concerted action. *Kiser Co. v. C. of G. Ry. Co.* 430 (440).

ADVANTAGE. See also **PREFERENCE.**

That one shipper may not enjoy at the hands of a carrier advantages that are denied to other shippers is a principle asserted in the act throughout its various provisions. *Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co.* 158 (164).

Carrier ought not to be required to make rates to equalize for complainant advantages of a business rival. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

Geographical disadvantages can not well be overcome by any proper adjustment of transportation charges. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (33).

Improper for Commission to equalize disadvantages of location and other conditions. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128 (137).

AGENT.

Carrier's, acting as rebilling agent for shipper, device. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (141).

AGREEMENT. See also **CONTRACT.**

Commission has no authority to approve or enforce an agreement between carrier and shipper. *Hood & Sons v. Del. & Hud. Co.* 15.

Covering points in controversy filed and tariff issued based thereon. Upon disagreement of parties as to interpretation of tariff, *Held*: Such an agreement may be regarded, and used as evidence of an admission as between the parties executing it, of strong evidentiary value, that rate agreed upon is reasonable. *Hood & Sons v. Del. & Hud. Co.* 15.

Written agreement providing for compromise and settlement submitted, approved as a basis for final settlement and satisfaction. *Jenks Lumber Co. v. So. Ry. Co.* 58.

Where language of tariff, based on agreement of parties covering points in controversy, is ambiguous, agreement may be examined as a medium of explanation of tariff to remove ambiguity. *Hood & Sons v. Del. & Hud. Co.* 15.

ALLOWANCES TO TAP LINES. See **TAP-LINE ALLOWANCES.****ALLOWANCES.**

Plaintiff's demand for reparation for lightering its own merchandise denied. *Barrett Mfg. Co. v. C. R. R. Co. of N. J.* 464.

Provision that allowance must be reasonable not applicable where allowance is made to compress company not owner of cotton which it compresses. If any violation of act it must be because of discrimination. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (105).

Made at South Memphis for handling cotton from interchange tracks to compresses and warehouses, in order to place South Memphis dealers on a parity with Memphis dealers where there is a free store-delivery, not objectionable. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (103).

Just and reasonable allowance may be made to owner of property transported, when such owner renders a service connected with or furnishes an instrumentality used in the transportation. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40.

Each case involving allowances must be determined upon the special facts and circumstances brought to our attention. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (106).

Fifty cents per bale for compression of cotton not found excessive. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (102).

Lighterage of coal-tar roofing paper across New York Harbor. *Barrett Mfg. Co. v. C. R. R. Co. of N. J.* 464.

ALLOWANCES—Continued.

Lighterage of sugar in New York Harbor. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40.

ALTERNATIVE RATES.

Special Circular No. 6 construed. *Carstens Packing Co. v. O. S. L. R. R. Co.* 324 (326).

AMENDMENT. See PLEADING AND PROCEDURE.**ANY QUANTITY.**

So long as carriers publish a reasonable any-quantity rate, the mere fact that they publish a lower rate in carloads on other commodities does not justify Commission in ordering a carload rate on the article in question. *Bentley & Olmsted Co. v. L. S. & M. S. Ry. Co.* 56.

ANTITRUST.

Effect of concerted advance in rates by carriers without definite agreement. *Kiser Co. v. C. of G. Ry. Co.* 430 (440).

ARBITRARIES.

N. P. Ry. receives certain arbitraries from C. M. & St. P. Ry. on coal from the head of the Lakes to St. Paul and Minneapolis, the C. M. & St. P. Ry. having a trackage right over the N. P. Ry., including the right to make rates. *Manahan v. N. P. Ry. Co.* 95 (97).

Rates from grain-producing points in Washington, Oregon, and Idaho to Astoria, Oreg., should not be greater than 4½ cents over Portland, Oreg. *Farmers' Cooperative & Educational Union v. G. N. Ry. Co.* 406.

ARRANGEMENT.

Shipments accepted for transportation from St. Louis to Leadville, Colo., and delivered by the M. P. to the D. & R. G. at Pueblo, neither the shipper or consignee intervening at Pueblo or elsewhere. These facts constitute an arrangement for through and continuous carriage, which clearly brings the transportation within the scope of the act to regulate commerce. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (226).

ARRIVAL OF CARS. See NOTICE OF ARRIVAL.**ASSIGNMENT.**

Complainant's demand for reparation is supported only by an assignment. *Jones v. K. C. S. Ry. Co.* 468 (470).

ASSORTING PACKAGES.

The service rendered by the defendant in providing a place where consignments can be handled and in assorting into lots the packages marked with the names of several dealers to whom they are consigned, is a thing of value to the shipper for which the shipper may properly be required to pay. *Davies v. I. C. R. R. Co.* 186 (188).

AUTHORITY OF COMMISSION. See POWER OF COMMISSION.**AUTHORITY OF CONGRESS. See POWER OF CONGRESS.****BACK HAUL.**

If shipment moves to or from a point *directly intermediate to the base point upon which the lowest combination makes*, such combination must be applied; and it is not necessary to haul shipment to such base point and back again to or through point of origin or destination. *Crutchfield & Woolfolk v. L. & N. R. R. Co.* 302 (303).

BAGGAGE.

A discrimination involved in the carrying of personal baggage for a passenger without extra charge is not undue as against a passenger without baggage. *Herbeck-Demer Co. v. B. & O. R. R. Co.* 88.

BASING POINT.

If shipment moves to or from point *directly intermediate to base upon which lowest combination makes*, such combination must be applied; and it is not necessary to haul shipment to such base point and back again to or through point of origin or destination. *Crutchfield & Woolfolk v. L. & N. R. R. Co.* 302 (303).

Rates from and through Ohio and Mississippi River crossings to Montgomery, Ala., may properly be higher than to Mobile, Ala., and Pensacola, Fla., but not by more than the locals back. *Montgomery Freight Bureau v. L. & N. R. R. Co.* 521.

BASE RATE.

The Chicago-New York base rate to be applied on fire, building, and paving brick on shipments eastbound from Central Freight Association territory to trunk-line territory should not exceed 21 cents per 100 pounds. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197.

While there are some inequalities resulting from the base rate scaled down to points between Chicago and New York, on the whole the present adjustment operates without undue discrimination between different localities or shippers. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (33).

New York-Chicago base rate advanced and subsequently restored. Reparation awarded on shipments made under higher rate. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

BOTH DIRECTIONS.

Rates between Reno, Nev., and Alturas, Cal., compared with rates in opposite direction on same commodities. *Lauer & Son v. Nevada-California-Oregon Ry.* 488; *Bunch & Tussey v. Same* 490, 506.

BRANCH LINES.

While Georges Creek mines are on lateral roads they must be regarded as intermediate for all practical rate-making purposes. *American Coal Co. v. B. & O. R. R. Co.* 149 (156).

BREAKING BULK.

The right of reconsignment in transit does not carry with it the right to remove a portion of carload at reconsigning point. *Acme Cement Plaster Co. v. C. & A. R. R. Co.* 220 (222).

BRICK. See also COMMODITIES.

Brick is a very desirable traffic possessing elements which seem to call for the making of low rates. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (207).

Common brick are made in almost every section of the country, and a rate made to move such a low-priced commodity as this should not be taken as the basis for fixing the rate on other classes of brick. *James & Abbot Co. v. B. & M. R. R.* 273 (274).

BULK.

In making a classification of articles, bulk and similar elements affecting the desirability of the traffic should be considered. *Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co.* 197 (203).

BURDEN OF PROOF.

The burden rests upon a carrier to justify a rate from an intermediate point that is higher than rate from a more distant point when the shipment moves over the same rails and in the same direction. *Carstens Packing Co. v. O. S. L. R. R. Co.* 324 (326).

On claim for reparation based upon alleged unlawful exaction of demurrage, charges dependent upon a question of fact in each instance, in the absence of specific proof as to each car Commission could not make the award. *Murphy Bros. v. N. Y. C. & H. R. R. R. Co.* 457 (459).

BURDEN OF PROOF—Continued.

Petitioner's claim that it ordered cars of definite length for the shipments involved is denied by defendant, and the conflict of testimony is such as to give the Commission no clear ground for holding that such demands were in fact made. *Pope Manufacturing Co. v. B. & O. R. R. Co.* 400.

CANADA.

Rate on newspaper from Grand Mere, Quebec, to San Francisco found unreasonable and reduced. *Williar v. Can. Nor. Que. Ry. Co.* 304.

CAPACITY.

A carload minimum for light and bulky articles like furniture should be such that the minimum can ordinarily be loaded, but the minimum is not necessarily unreasonable, because it occasionally happens that cars, although loaded to their full physical capacity, will not contain it. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72.

CARS. See also CAR SIZE; DOUBLE-DECK CARS; TWO CARS FOR ONE.

Ice transported in special ice cars should be charged a higher rate. *Mountain Ice Co. v. D. L. & W. R. R.* 447 (452).

CAR EARNINGS.

It is difficult to see how earnings of from \$24 to \$48 per car for a haul of some 500 miles can be held an excessive return for the service rendered. *Pabst Brewing Co. v. C. M. & St. P. Ry. Co.* 359 (360).

Earnings per car given on transportation of cotton-seed oil in tank cars. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (319).

CARLOAD AND LESS THAN CARLOAD.

L. c. l. rate on gunpowder in quantities of less than 10,000 pounds was twice the first-class rate, while on shipments exceeding 10,000 pounds the single first-class rate applied. *Held*, a charge on shipments of less than 6,000 pounds that exceeds the charges assessable on an l. c. l. shipment of the same commodity of 10,000 pounds is unreasonable. *Aetna Powder Co. v. C. M. & St. P. Ry. Co.* 165.

It is a false theory which seeks to force shipper to avail himself of a less-than-carload service, which is more expensive to render, for purpose of increasing gross revenues. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (565).

Commission declines to put in carload rates on boots and shoes between Boston and Des Moines, because those articles generally move in less than carload quantities, and there is no evidence in the record warranting the introduction of a new unit of transportation as to those commodities. *Bentley & Olmsted Co. v. L. S. & M. S. Ry. Co.* 56.

Because of long-continued practice of carriers to which commerce of country had adjusted itself, Commission early in its history accepted as valid and justified a carload rate that was less proportionately than rate on less than carload shipment of same commodity. *Carstens Packing Co. v. O. S. L. R. R. Co.* 324 (328).

Shipment sent to interstate point, stored, and subsequently part removed and forwarded to point within same state. *Held*, that the right of reconsignment in transit does not carry with it the right to remove a portion of carload at reconsigning point. *Acme Cement Plaster Co. v. C. & A. R. R. Co.* 220 (222).

In regard to less-than-carload can rate on milk, rate somewhat higher than rate per can when transported in carloads is justified, but such less-than-carload rate per can should bear a reasonable and proper relation to the carload rate. *Hood & Sons v. Del. & Hud. Co.* 15 (20).

CARLOAD AND LESS THAN CARLOAD—Continued.

So long as carriers publish a reasonable any-quantity rate, mere fact that they publish lower rate in carloads on other commodities does not justify Commission in ordering a carload rate on the article in question. *Bentley & Olmsted Co. v. L. S. & M. S. Ry. Co.* 56.

Carload is not unit in shoe business, and consolidation of shipments impracticable. *Kiser Co. v. C. of G. Ry. Co.* 430.

CAR MILEAGE.

Defendants pay owners for use of tank cars three-fourths of a cent per mile, which is assessed on empty as well as on loaded movements. Tank cars are said to make an average of 83 miles per day and therefore cost carriers 63 cents a day in mileage, while other cars average 21 miles per day and cost them a per diem of 25 cents. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (319).

CAR RENTAL.

Rental charge of \$5 per car on shipments of beer from Olympia and Seattle, Wash., to points in California, Nevada, and Arizona, declared unreasonable and unjustly discriminatory. *Olympia Brewing Co. v. N. P. Ry. Co.* 178.

Agreement made for the transportation of milk between certain points at a minimum charge per car per annum. *Hood & Sons v. Del. & Hud. Co.* 15 (16).

CAR SIZE.

Shippers are cautioned to give their orders for equipment in writing, or promptly to confirm the orders in writing when given verbally. *Pope Manufacturing Co. v. B. & O. R. R. Co.* 400.

When shipper orders car of certain capacity Commission will not sanction imposition of additional charges on shipment that could have been loaded into such car when carrier for its own convenience furnishes larger car. *Kaye & Carter Lumber Co. v. M. & I. Ry. Co.* 209.

50-foot car furnished, with minimum of 16,000 pounds; actual weight of shipment, 14,580 pounds, and charges based on 16,000-pound minimum; minimum found unreasonable as to this shipment, as car was not loaded fully and a smaller car could have held the shipment. *Peerless Agencies Co. v. A. T. & S. F. Ry. Co.* 218.

Petitioner's claim that it ordered cars of definite length for the shipments involved is denied by defendant, and the conflict of testimony is such as to give the Commission no clear ground for holding that such demands were in fact made. *Pope Manufacturing Co. v. B. & O. R. R. Co.* 400.

There should be a relation between the minimum and the physical capacity of the car, which means that the minimum might properly increase as the size of the car increased. *Pease Bros. Furniture Co. v. S. P. L. A. & S. L. R. R. Co.* 223 (224).

CARRIER'S DUTY.

It is duty of an interstate carrier to receive interstate shipments, issue receipts therefor, indicate on waybills the final destinations, and transport and deliver to its connecting carriers; and it is duty of connecting carriers to transport and deliver at destinations, each carrier charging for its service its legally published rate. *Corporation Commission of Oklahoma v. C. R. I. & G. Ry. Co.* 379.

No violation of the act can be predicated on the fact that a carrier makes with one independent company a contract more favorable than with another for a service which that carrier is bound or undertakes to perform. *Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co.* 98.

CARRIER'S DUTY—Continued.

The act deals only with the obligations of carriers as carriers, and in no way attempts to regulate or interfere with matters not involving their duties to shippers or passengers or such. *Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co.* 98.

CARTAGE.

Even if lighterage service be regarded as a species of cartage, it would not necessarily follow that it must be extended to Yonkers because it is provided in Greater New York. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (46).

CHANGE OF NAME OF CONSIGNEE.

Charge of \$5 per car is excessive where only name of consignee is changed. One dollar per car is a reasonable charge for the service. *Beekman Lumber Co. v. K. C. S. Ry. Co.* 86.

CHARTERS.

Reservation by Congress of right to fix charges over bridge exercised by delegation of authority to Commission. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (246).

CHECKING PACKAGES.

While it might be of some advantage to complainant if defendant were required to check off packages when taken away by the various commission merchants it would impose a burden out of all proportion to the benefit conferred, since the complainant would still be under the necessity of making the same check himself. *Davies v. Ill. Cent. R. R. Co.* 186 (188).

CHEESE. See **COMMODITIES.**

CHILDREN.

Section 2 precludes the allowance of commutation rates to school children unless the same rates are open to all children within the age limit. *In re Commutation Tickets to School Children*, 144.

CINDERS. See **COMMODITIES.**

CIRCUMSTANCES AND CONDITIONS.

Complainant's chief witness testified that he had closed his eyes to every condition and all circumstances except those relating to the situation as between Fort Smith and Muskogee. The Commission's vision, however, must not be so restricted. The whole adjustment from points of production to points of destination must be viewed. *Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co.* 169 (172).

Proximity of Detroit and Toledo to the great channels of through transportation and their location on direct through routes and other circumstances can not be ignored and tend to lower rates than can be accorded communities removed from these streams of traffic. *Saginaw Board of Trade v. G. T. Ry. Co.* 128.

Freight rates are controlled by various and varying conditions, and therefore rates in one section furnish no reliable standard by which to measure the reasonableness of rates in another section where dissimilar conditions prevail. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

Any discrimination which exists must not exceed that which is warranted by the differences in circumstances and conditions. *Sondheimer Co. v. I. C. R. R. Co.* 60 (64).

CLAIMS.

Carriers criticised for their lack of prompt attention to plain overcharge claims and for their delay in adjusting them. *Tyson & Jones Buggy Co. v. Aberdeen & Asheboro Ry. Co.* 330.

CLASS AND COMMODITY RATES.

Where rates on a particular commodity bear a uniform relation to rates of a certain class, any inequalities in those rates as between different places are those peculiar to that class. A finding that rates on such commodity, made to conform to a class, are relatively unjust would inferentially condemn the adjustment with respect to the entire class, and this is also true of the reasonableness of the rates. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (35).

The Commission is disposed to encourage the making of class rates wherever practicable, because of their tendency to uniformity and stability. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

Class rates on heavy commodities are made to move the more or less limited shipments from place to place, and commodity rates to move large, steady shipments. *James & Abbot Co. v. B. & M. R. R.* 273 (275).

CLASSIFICATION.

In making a classification, bulk, value, liability to loss and damage, and similar elements affecting the desirability of the traffic should be considered, and articles which are analogous in character should ordinarily be placed in the same class. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (203).

Elevator controllers involved in these cases were parts of hoisting machines with which they were shipped and under the classification could have been shipped in mixed carloads at the rate applicable to hoisting machines. *Otis Elevator Co. v. N. Y. C. & H. R. R. Co.* 3.

Coffeepot percolators compared with coffee percolators and, considering value, size, and commercial conditions, rate reduced from double first class to first class. *Landers, Frary & Clark v. A. T. & S. F. Ry. Co.* 511.

Classification is sometimes made with respect to the manner of packing of articles. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (201).

CLEAN HANDS.

On account of false billing and acquiescence by carrier's agents, no relief order will be entered, as neither party comes before Commission with clean hands. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139.

COLLECTION OF CHARGES.

Carrier may waive its right to demand prepayment and accept shipment with understanding that it will collect from consignee; but if it does not collect from consignee it must look to consignor for payment. *Boise Commercial Club v. Adams Express Co.* 115 (121).

COMBINATION RATE.

Shipment of cement plaster, Acme, Tex., to East St. Louis, stored, and without tariff provision, reconsigned to Braidwood, Ill., local rate being charged for the latter movement; complaint made that balance of through rate should have been applied; *Held*, that shipment from East St. Louis to Braidwood was a state movement, and carrier had no right to allow it to go forward at balance of through rate. *Acme Cement Plaster Co. v. C. & A. R. R. Co.* 220.

Combination through rate from points east of Indiana-Illinois state line to Des Moines, Iowa, are excessive, unreasonable, and unlawful by reason of the excessive proportionals applied by the Rock Island. *Greater Des Moines Committee v. C., R. I. & P. Ry. Co.* 54.

One factor of combination through rate found unreasonable. *Farmers' Cooperative & Educational Union v. G. N. Ry. Co.* 406.

COMBINATION RATE—Continued.

If shipment moves to or from a point directly intermediate to the base upon which the lowest combination makes, such combination must be applied; and it is not necessary to haul shipment to such base point and back again to or through point of origin or destination. *Crutchfield & Woolfolk v. L. & N. R. R. Co.* 302 (303).

A rate formed by a combination of separate rates over connecting lines has every substantial feature of through rate, and separately established rates over a through route is expressly recognized in section 6 of the act. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (228).

Rate on agricultural implements from Wallingford, Vt., to Denver made by combination on Mississippi and Missouri Rivers. Minimum from Missouri River found unreasonable and ordered reduced. *Tritch Hardware Co. v. Rutland R. R. Co.* 542.

Where through rate is constructed on combination, each factor must be published and filed with the Commission. Without filing of each factor there is no official measure of the rate. *Awbrey & Semple v. G. H. & S. A. Ry. Co.* 267 (271).

Rate on beer from Pueblo, Colo., to Leadville, Colo., originating at St. Louis, Mo., and forwarded from Pueblo without intervention of shipper, found unreasonable and reduced. *Bear Bros. Mercantile Co. v. M. P. Ry. Co.* 225.

Shipment billed to intermediate out-of-line point, charges paid, and ordered rebilled to destination, using carrier's agent as forwarder. Closely resembles a device. *Sligo Iron Store Co. v. A., T. & S. F. Ry. Co.* 139.

Where two available combination rates over the route to be taken, charges should be the lowest combination. *Contact Process Co. v. N. Y. C. & St. L. R. R. Co.* 184.

COMMISSION MERCHANT.

Complainant is a commission merchant, was neither consignor nor consignee, and did not pay the charges. Order for reparation will be entered that defendant refund to such party as may lawfully be entitled to receive the same. *Jones v. K. C. S. Ry. Co.* 468 (470).

COMMODITIES.

Acid, Buffalo, N. Y., to Tulsa, Okla. 184.

Agricultural implements, Hopkins, Minn., to points in states west and south, 189.

Agricultural implements, Horicon Junction, Wis., to Minnesota Transfer, Minn. 195.

Agricultural implements, Missouri River to Denver from Wallingford, Vt. 542.

Almeria grapes, seaboard points to Pittsburg, Pa. 283.

Anthracte coal, Duluth, Minn., and Superior, Wis., to St. Paul and Minneapolis, Minn. 95.

Apples, Reno, Nev., to Alturas, Cal. 506.

Ashes, Bay City, Mich., to Williamson's siding, Norfolk, Va. 27.

Asparagus, Charleston, S. C., to Atlantic coast ports, 423.

Asphaltum, Caney, Kans., to Minneapolis, Minn. 166.

Automobiles, Hagerstown, Md., to Marinette, Wis., and Blairstown, Iowa, 400.

Axles, Marshall, Tex., to Holdup, La. 333.

Axles, Wilkes-Barre, Pa., to Carthage, N. C. 330.

Barbed wire, El Paso, Tex., to Las Cruces, N. Mex. 354.

Barley, Port Costa, Cal., to Milwaukee, Wis. 576.

Barrel grapes, seaboard points to Pittsburg, Pa. 283.

Bath tubs, eastern points to Pacific coast terminals, minima, 72.

COMMODITIES—Continued.

- Bedroom furniture, eastern points to Pacific coast terminals, minima, 72.
- Beds, eastern points to Pacific coast terminals, minima, 72.
- Beer, Atlantic coast points to San Francisco, 503.
- Beer, St. Louis to Leadville, Colo., via Pueblo, Colo. 225.
- Beer, Seattle and Olympia, Wash., to California, Nevada, and Arizona, 178.
- Beer kegs, empty, Frontenac, Kans., to Chicago, Ill. 329.
- Beer packages, Omaha, Nebr., and Kansas City, Mo., to Milwaukee, Wis. 359.
- Beet-sugar pulp, Janesville, Wis., to Cattaraugus, N. Y., and Windber, Pa. 443.
- Big-vein coal, Georges Creek basin to tidewater, when going over piers to beyond the Capes, 149.
- Bituminous coal, Duluth, Minn., and Superior, Wis., to St. Paul and Minneapolis, Minn. 95.
- Black powder, Montchanin, Del., to Pennsylvania and Ohio points, 544.
- Blacksmith coal, Chicago and Pittsburg, Kans., to Portales, N. Mex. 139.
- Boots and shoes, Boston, Mass., to Des Moines, Iowa, 56.
- Boots and shoes, North Atlantic ports to Atlanta, Ga. 430.
- Brass beds, eastern points to Pacific coast terminals, minima, 72.
- Brass-covered iron tubing, New York City and neighboring points to San Francisco, 475.
- Brass furniture trimmings and knobs, Grand Haven, Mich., Waterbury, Conn., and Rome, N. Y., to San Francisco, 471.
- Brick, Boston, Mass., to Lewiston, Me. 273.
- Brick, Central Freight Association territory to Trunk Line territory, 197.
- Buckwheat, Gobles, Mich., to Janesville, Wis. 587.
- Building brick, C. F. A. territory to Trunk Line territory, 197.
- Cannel coal, Mill Creek-Elk, W. Va., to points in various states, 306.
- Car wheels, Marshall, Tex., to Holdup, La. 333.
- Cattle, Baker City, Oreg., to Tacoma, Wash. 125.
- Cattle, Glenns Ferry and Mountain Home, Idaho, to Tacoma, Wash. 324.
- Cattle, Iowa points to Chicago, 533.
- Cedar posts, Hines, Minn., to Benton, Nebr., and Windsor, Mo. 209.
- Cement, Galveston, Tex., to Nogales, Ariz., destined to Magdalena, N. Mex. 267.
- Cement plaster, Acme, Tex., to East St. Louis, reconsigned to Braidwood, Ill. 220.
- Chairs, eastern points to Pacific coast terminals, minima, 72.
- Chair stock, eastern points to Pacific coast terminals, minima, 72.
- Cheese, misdelivery at Louisville, Ky. 175.
- Cinders, Chicago to Omaha, Nebr. 11.
- Citrus fruits, Florida points of production and base points to Ohio River and north, 552.
- Class rates, Chicago to Des Moines, Iowa, 57.
- Class rates, Chicago and east of Illinois-Indiana state line to Ottumwa, Iowa, 413.
- Class rates, various eastern points to Des Moines, Iowa, 54.
- Class rates, New Orleans to Montgomery, Selma, Mobile, and Prattville, Ala. and Pensacola, Fla. 231.
- Class and commodity rates, Ohio and Mississippi River crossings to Montgomery, Ala. 521.
- Class rates, points on B. S. & C. R. R. 569.
- Class rate, flour, Turon, Kans., to Lake Charles, La. 1.

COMMODITIES—Continued.

- Clothing, New York City to Janesville, Wis. 508.
 Coal, Big Four Mine, Colo., to Hutchinson, Kana. 286.
 Coal, Chicago to Portales, N. Mex. 139.
 Coal, Duluth, Minn., and Superior, Wis., to St. Paul and Minneapolis, Minn. 95.
 Coal, switching charge in El Paso, Tex. 491.
 Coal, Fostoria, Tex., from Bonanza and Huntington, Ark. 385.
 Coal, Georges Creek basin to tidewater, destined beyond the Capea, 149.
 Coal, Green Bay, Wis., to Leola and Wetonka, S. Dak. 373.
 Coal, demurrage at Keene, N. Y. 392.
 Coal, cannel, Mill Creek-Elk, W. Va., to points in various states, 306.
 Coal, Moundsville district to Washington, Pa. 473.
 Coal, Pittsburg, Kana., to Portales, N. Mex. 139.
 Coal, Point Pleasant, N. J., from Pennsylvania fields, 383.
 Coal, Strong, Colo., to Quinn and Cottonwood, S. Dak. 540.
 Coal, Walsenburg district, Colo., to Texas and New Mexico points, 479.
 Coal tar, lighterage in New York Harbor, 464.
 Coffeepot percolator, western classification, 511.
 Coke, points in various states to Globe, Ariz. 309.
 Common brick, Boston, Mass., to Lewiston, Me. 273.
 Corn, elevator allowances and facilities at Argenta, Ark. 158.
 Corn, Cincinnati, Ohio, to Morehead, Ky. 335.
 Cotton, Jackson, Tenn., to New England points, 418.
 Cotton, Lawton, Okla., to Chickasha, Okla. 12.
 Cotton, compression at Memphis and allowances, 98.
 Cotton-seed cake, Bartlett, Tex., to Onaga and Winchester, Kana. 295.
 Cotton-seed oil, Memphis, Tenn., to Cincinnati, Chicago, and Louisville, 313.
 Crushed stone, Cedar Bluff, Ky., to Baton Rouge, La. 300.
 Dairy products, switching charge in El Paso, Tex. 491.
 Eggs, Ellsworth, Kana., to Butte, Mont. 182.
 Electrical hoisting machinery and controllers, Yonkers, N. Y., to San Francisco, 3.
 Elevator controllers, Yonkers, N. Y., to San Francisco, 3.
 Empty beer kegs, Frontenac, Kana., to Chicago, Ill. 329.
 Empty beer packages, Omaha, Nebr., and Kansas City, Mo., to Milwaukee, Wis. 359.
 Fence posts, Beaudette and Warroad, Minn., to North and South Dakota, 276.
 Fencing wire, El Paso, Tex., to Las Cruces, N. Mex. 354.
 Fire brick, C. F. A. territory to Trunk Line territory, 197.
 Flour, Turon, Kana., to Lake Charles, La. 1.
 Folding beds, eastern points to Pacific coast terminals, minima, 72.
 Forest products, free time at New Orleans, 496.
 Fruit, delay at Pittsburg, 361.
 Fruit, unloading and assorting at Chicago, 186.
 Fruit, Florida base points to Ohio River and north, 552.
 Fruit and vegetables, unloading at Minneapolis and St. Paul, 596.
 Furniture, Chicago to El Paso, Tex. 322.
 Furniture, eastern points to Pacific coast terminals, minima, 72.
 Furniture, eastern points to Pacific coast cities, 223.
 Furniture trimmings and knobs, Grand Haven, Mich., Waterbury, Conn., and Rome, N. Y., to San Francisco, 471, 585.
 Gasoline, Minneapolis and St. Paul to South Dakota, 146.
 Gocarts, Elkhart, Ind., to Tacoma, Wash. 394.

COMMODITIES—Continued.

- Grain, elevator allowances and facilities at Argenta, Ark. 158.
 Grain, Astoria, Oreg., from Washington, Oregon and Idaho, 406.
 Grain, Council Bluffs and Omaha to southeastern points through Henderson, Ky. 573.
 Grain, Turon, Kans., to Lake Charles, La. 1.
 Grapes, Pewee Valley, Ky., to Pittsburg, Pa. 302.
 Grapes, seaboard points to Pittsburg, Pa. 283.
 Gunpowder, Chicago to Green Bay, Shullsburg, and Platteville, Wis. 165.
 Gypsum rock products, Grand Rapids, Mich., to various points, 30.
 Hard-wood lumber, Black Rock, Ark., to San Francisco, 416.
 Hard-wood lumber, west of Mississippi River to San Francisco, 251.
 Hard-wood lumber, points east of Mississippi River to Pacific coast terminals, 288.
 Hay, Amsterdam and Merwin, Md., to Memphis, Tenn. 468.
 Hemp, Pacific coast terminals to Bismarck, N. Dak. 580.
 Hogs, Iowa points to Chicago, 533.
 Hoisting machines, Yonkers, N. Y., to San Francisco, 3.
 Horses, Chambersburg, Pa., to Warwick, N. Y. 307.
 Ice, Los Angeles, Cal., to Yuma, Ariz. 461.
 Ice, various points in Pennsylvania to Brooklyn, Harlem, and other points in New Jersey and New York, 447.
 Illuminating oils, Minneapolis and St. Paul to South Dakota, 146.
 Iron beds, eastern points to Pacific Coast terminals, minima, 72.
 Iron wagon axles, Wilkes-Barre, Pa., to Carthage, N. C. 330.
 Kegs, empty, Frontenac, Kans., to Chicago, Ill. 329.
 Liquid asphaltum, Caney, Kans., to Minneapolis, Minn. 166.
 Locomotive, Easton, Pa., to Lake View, N. J. 280.
 Logs, tap-line allowances, 338.
 Logs, walnut, Weiner and St. Francis, Ark., and intermediate points, to East St. Louis, Ill. 582.
 Lumber, Beckville, Tex., to points in Oklahoma, 379.
 Lumber, from Black Rock, Ark., to San Francisco, 416.
 Lumber, Caro, Tex., to Memphis, Tenn. 290.
 Lumber, Deridder, La., to Fort Smith, Ark. 86.
 Lumber, Ellisville, Miss., to Greenville, Pa. 22.
 Lumber, Fostoria, Tex., to Gary, Ind. 292.
 Lumber, hard-wood, west of Mississippi River to San Francisco, 251.
 Lumber, hard-wood, points east of Mississippi River to Pacific Coast terminals, 288.
 Lumber, reparation awarded under yellow-pine cases, 58.
 Lumber, southern and western points to Cairo destined to northeastern points, 60.
 Lumber, southeastern points to northern and western states, 388.
 Lumber, southwestern points; tap line allowances, 340.
 Malaga grapes, seaboard points to Pittsburg, Pa. 283.
 Mantels, Buffalo, N. Y., to San Francisco, Cal. 218.
 Mantels, eastern points to Pacific Coast terminals, minima, 72.
 Mattresses, eastern points to Pacific Coast terminals, minima, 72.
 Merchandise, points on B. S. & C. R. R. 569.
 Metal furniture trimmings, Grand Haven, Mich., Rome, N. Y., and Waterbury, Conn., to San Francisco, 585.
 Milk, Poultney, Vt., to Eagle Bridge, N. Y. 15.

COMMODITIES—Continued.

- Mill cinders, Chicago to Omaha, Nebr. 11.
 Mussel shells, Terre Haute, Ind., to Davenport, Iowa, 193.
 Nails, wire, El Paso, Tex., to Las Cruces, N. Mex., 354.
 Newspaper, Grand Mere, Quebec, to San Francisco, 304.
 Oats, free time and track storage charges in New York, 123.
 Oil, Atlantic coast to Pacific coast, 594.
 Oils, illuminating, Minneapolis and St. Paul to South Dakota, 146.
 Onions, Reno, Nev., to Alturas, Cal. 488, 490.
 Package freight, unloading at Chicago, 596.
 Paving brick, C. F. A. territory to Trunk Line territory, 197.
 Peaches, Horatio, Ark., to Memphis, Tenn. 90.
 Persulphate of iron, Aurora, Ill., to San Francisco, 297.
 Pineapples, points of production in Florida to Jacksonville, destined beyond, 552.
 Plaster, Acme, Tex., to East St. Louis, reconsigned to Braidwood, Ill. 220.
 Plaster, Grand Rapids, Mich., to various points, 30.
 Poles, Beaudette and Warroad, Minn., to North and South Dakota, 276.
 Posts, Beaudette and Warroad, Minn., to North and South Dakota, 276.
 Posts, cedar, Hines, Minn., to Benton, Nebr., and Windsor, Mo. 209.
 Potatoes, east Virginia points to Hinton, W. Va. 578.
 Potatoes, Reno, Nev., to Alturas, Cal. 488, 490.
 Powder, Montchanin, Del., to Pennsylvania and Ohio points, 544.
 Produce, unloading and assorting at Chicago, 186.
 Produce, unloading at Chicago, 596.
 Pulp, sugar-beet, Janesville, Wis., to Pennsylvania and New York points, 548.
 Roofing material, lighterage in New York Harbor, 464.
 Salt, Kansas to Muskogee, Okla. 169.
 Sheep, Iowa points to Chicago, 533.
 Sheep, Tacoma, Wash., from California points, 6.
 Shells, Terre Haute, Ind., to Davenport, Iowa, 193.
 Shoes, north Atlantic ports to Atlanta, Ga. 430.
 Shoes, Boston, Mass., to Des Moines, Iowa, 56.
 Soap, Buffalo, N. Y., to Points on D. & H. Co. north of Whitehall, N. Y. 167.
 Springs, eastern points to Pacific Coast terminals, minima, 72.
 Steel bath tubs, eastern points to Pacific Coast terminals, minima, 72.
 Stone, crushed, Cedar Bluff, Ky., to Baton Rouge, La. 300.
 Sugar, Eaton, Colo., to Decatur, Ill. 13.
 Sugar, free lighterage in New York Harbor, 40.
 Sugar-beet pulp, Janesville, Wis., to Cattaraugus, N. Y. 443.
 Sugar-beet pulp, Janesville, Wis., to New York and Pennsylvania points, 548.
 Sulphuric acid, Buffalo, N. Y., to Tulsa, Okla. 184.
 Tables, eastern points to Pacific Coast terminals, minima, 72.
 Threshing machines, Hopkins, Minn., to local points on the lines of defendants, 189.
 Tobacco, Kentucky and Tennessee to Mexico, 568.
 Truck, unloading and assorting at Chicago, 186.
 Tubing, iron, brass-covered, New York City and neighboring points to San Francisco, 475.
 Vegetables, unloading and assorting at Chicago, 186.
 Vegetables, Florida base points to Atlantic Coast ports, 552.
 Wagon axles, Wilkes-Barre, Pa., to Carthage, N. C. 330.
 Wall plaster, Grand Rapids, Mich., to various points, 30.

COMMODITIES—Continued.

Walnut logs, Welner and St. Francis, Ark., and points intermediate, to East St. Louis, 582.

Washing powders, Buffalo, N. Y., to points north of Whitehall, N. Y. 167.

Wire, barbed, El Paso, Tex., to Las Cruces, N. M. 354.

Wire fencing, El Paso, Tex., to Las Cruces, N. M. 354.

Wire nails, El Paso, Tex., to Las Cruces, N. M. 354.

Wire staples, El Paso, Tex., to Las Cruces, N. M. 354.

Wood mantels, Buffalo, N. Y., to San Francisco, 218.

Wood mantels, eastern points to Pacific Coast terminals, minima, 72.

Yellow-pine lumber, reparation awarded under. Tift cases, 58.

Yellow-pine lumber, southeastern points to northern and western States, 388.

COMMODITIES CLAUSE.

Identity of ownership of terminal and adjoining refinery is a relationship which should be subjected to the closest scrutiny. Federal Sugar Refining Co. v. B. & O. R. R. Co. 40.

COMMODITY RATES.

Commodity rate generally lower than rate applicable to the class from which the commodity is withdrawn, and is established because considerations other than relative rating so require. Kiser Co. v. C. of G. Ry. Co. 430 (439).

Class rates on heavy commodities are made to move the more or less limited shipments from place to place, and commodity rates to move large, steady shipments. James & Abbot Co. v. B. & M. R. R. 273 (275).

COMMON ARRANGEMENT. See **ARRANGEMENT.****COMMON CARRIERS.**

Commission can not recognize as common carriers lines that do not publish tariffs in lawful form or concur properly in lawful tariffs of other lines or that do not in all other respects comply with the law. Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co. 338.

Grain & Lumber Co. v. A. T. & S. F. Ry. Co. 338.

Mere interposition between lumber mill and carrier of a paper railroad incorporation that calls itself a common carrier and complies with the act in those respects, but is owned by the mill or its proprietors, does not give legality to the so-called tap-line allowances or meet requirements of Commission. Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co. 338.

COMMON LAW.

If the contention is correct that defendants are not subject to the act to regulate commerce, the reasonableness of the fares could be determined only by the common law or by Congress. West End Improvement Club v. O. & C. B. R. & B. Co. 239 (246).

COMMUTATION TICKETS.

Carrier may determine for itself whether it will sell commutation tickets; but if it elects to sell them it must do so subject to the provisions of the act. Weber Club & Intermountain Fair Asso. v. O. S. L. R. R. Co. 212 (216).

Section 2 precludes the allowance of commutation rates to school children unless same rates are open to all children within the age limit. *In re Commutation Tickets to School Children*, 144.

COMPARATIVE RATES.

Brass furniture trimmings and knobs made of same materials as brass shells and canopies for lighting fixtures, and practically only difference between the two is use to which they are put. One should not take a higher rate than the other. Merle Company v. A. T. & S. F. Ry. Co. 471; Same v. N. Y., N. H. & H. R. R. Co. 585.

COMPARATIVE RATES—Continued.

Rule that transportation charge for posts and poles shall not exceed that applied to sawed lumber seems to grow out of the character of the commodities themselves. But there is no competitive reason why rate upon the two commodities should be the same. *Partridge Lumber Co. v. G. N. Ry. Co.* 276 (278).

Assuming that the common rate from three districts was a normal rate on the less valuable coal, it follows that the rate reserved to the owners of the big-vein mines the full benefit and advantage of the superior quality of their coal. *American Coal Co. v. B. & O. R. R. Co.* 149 (150).

Owing to differences in bulk and weight there must of necessity be marked variations in revenue per car produced by articles in the same and other classes, and a disparity either way is not conclusive of the propriety of an adjustment. *Kiser Co. v. C. of G. Ry. Co.* 430 (439).

Brass-covered iron tubing compared with brass and iron tubing, and a rate less than one and more than the other is established. *Merle Company v. N. Y. C. & H. R. R. Co.* 475.

So long as carriers publish a reasonable any-quantity rate, the mere fact that they publish a lower rate in carloads on other commodities does not justify Commission in ordering a carload rate on the article in question. *Bentley & Olmsted Co. v. L. S. & M. S. Ry. Co.* 56.

Common brick are made in almost every section of the country, and a rate made to move such a low-priced commodity as this should not be taken as the basis for fixing the rate on other classes of brick. *James & Abbot Co. v. B. & M. R. R.* 273 (274).

Claim for differential on slack and nut coal under the lump rate denied, record not containing sufficient data upon which to warrant Commission in establishing it. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (486).

Big-vein coal from Georges Creek Basin to tide water, destined beyond the capes, unreasonable and discriminatory as compared with rates on small-vein coal between same points. *American Coal Co. v. B. & O. R. R. Co.* 149.

While use no basis for difference in rates, substantial difference is found between blacksmith coal and ordinary bituminous coal, warranting a special smithing-coal rate. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139.

Coffeepot percolators compared with coffee percolators and, considering value, size, and commercial conditions, rate reduced from double first class to first class. *Landers, Frary & Clark v. A. T. & S. F. Ry. Co.* 511.

That there may have been difference between rates on cattle and sheep in double-deck cars, not deemed sufficient to establish that sheep rates were unreasonable. *Carstens Packing Co. v. So. Pac. Co.* 6 (8).

There is no transportation reason for making different rates on different grades of fire, building, and paving brick. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197.

Only in very unusual cases that higher rates should be applied to posts and poles than to lumber. *Partridge Lumber Co. v. G. N. Ry. Co.* 276 (278).

No undue discrimination found against users of anthracite coal on account of lower rates on bituminous coal. *Manahan v. N. P. Ry. Co.* 95 (97).

Rates on grapes from seaboard points to Pittsburg, Pa., compared with rates on vegetables. *Connolly-Fanning Co. v. P. R. R. Co.* 283.

Rates on cotton-seed oil compared with cotton seed. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (320).

COMPETITION. See also **MARKET COMPETITION**; **POTENTIAL COMPETITION**; **WAGON COMPETITION**; and **WATER COMPETITION**.

Competition that may be considered in proper cases not only includes that between carriers, but also that of the commodity produced in another section and sometimes competition of one kind of traffic with another kind. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (203).

Even though a given combination is brought about by competitive conditions inducing the establishment of the factors constituting the same, in absence of facts to the contrary there would seem to be but little ground for claiming that a through rate should exceed that combination. *Awbrey & Semple v. G. H. & S. A. Ry. Co.* 267 (271).

Complaint of undue discrimination in coal rates to Point Pleasant, N. J., as compared with rates on coal to other stations on the coast of New Jersey, not sustained by the evidence, short-line competition to the other points justifying difference in the rates. *Ocean County Coal Co. v. C. R. R. Co. of N. J.* 383.

Competition between the different grades of brick is of such a character that no scheme of classification is possible which will not permit, if it does not encourage, the misbilling of the product in order to secure lower rates. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (204).

Rail carriers from Grand Rapids ought not to be required to make rates to meet water competition or to equalize for complainant advantages of a business rival which moves its product to Chicago by its own water line. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

Rates to Montgomery, Ala., may properly be higher than to Mobile, Ala., and Pensacola, Fla., by reason of competitive conditions at the Gulf ports, but should not be higher than the locals back. *Montgomery Freight Bureau v. L. & N. R. R. Co.* 521.

Density of traffic and competition force lower rates north of Ohio River on boots and shoes, and Lynchburg probably influenced by the adjustment, creating different conditions than at southeastern destinations. *Kliser Co. v. C. of G. Ry. Co.* 430 (441).

Low percentages at Detroit and Toledo was the result, if not of actual water competition, at least of a very strong potential competition arising from their location on the Lakes. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128 (136).

Combination lower than through rate. Defendant asserts that one factor is forced by water competition. The through rate should seldom, if ever, for competitive reasons, exceed the combination. *Kimberly v. C. & O. Ry. Co.* 335 (336).

Claim that fourth section of act was violated in these shipments not sustained, as short line made the rate to competitive point and defendants had to meet that condition. *Foster Lumber Co. v. G. C. & S. F. Ry. Co.* 385.

Former rates forced down by competition, which competition has since ceased. Advanced rate not being shown unreasonable, complaint dismissed. *Schoenhofen Brewing Co. v. A. T. & S. F. Ry. Co.* 320.

While permissible to meet competition at longer-distant point, intermediate rate should not be prejudiced by unreasonably low rate to the farther-distant point. *Kimberly v. C. & O. Ry. Co.* 335 (336).

One purpose of the act is to preserve competitive conditions between common carriers, but it is another purpose to prevent undue discrimination. *Railroad Commission of Tennessee v. A. A. R. R. Co.* 418 (421).

COMPETITION—Continued.

Two grades of coal into competitive territory took different rates, the more valuable being better able to stand the competition. *American Coal Co. v. B. & O. R. R. Co.* 149 (150).

Defendants' contention that competition justified the lower rates for the longer haul not sustained. *Carstens Packing Co. v. O. S. L. R. R. Co.* 324. More at Memphis than at Cairo, Ill., on lumber from southwestern points to northeastern points. *Sondheimer Co. v. Ill. Cent. R. R. Co.* 60 (66). When competition by water ceased, no reason why Memphis should continue to have extremely low rates. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (320).

Competition found to justify lower rate from longer-distance point. *Crutchfield & Woolfolk v. L. & N. R. R. Co.* 302 (303).

United States mails on packages up to and including 7 pounds. *Boise Commercial Club v. Adams Express Co.* 115 (116).

Competition has a more or less definite relation to the rate that carrier may reasonably demand. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

COMPETITIVE RATES.

If particular point is discriminated against, fact that removal of discrimination would disturb rates at other points of little weight. But when change would be followed by changes at competitive points which restore the same relationship and existing rates not shown excessive, justification for change not found. *Montgomery Freight Bureau v. L. & N. R. R. Co.* 521 (529).

When carrier has two or more available routes between two given points, the lowest rate via either or any of them must be applied to a shipment moving over either or any of said routes. *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 443.

COMPLAINANT.

Defendants contend that complainant is not a proper party to maintain action before the Commission. The decisions of the Commission and the law itself stand for the principle that complainant is entitled to standing under the act. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (240).

COMPLAINT. See PROCEDURE.**COMPRESS COMPANY.**

No violation of the statute results from a preference, though found to exist, to a corporation engaged solely in the compression of cotton in which it has no interest. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (104).

COMPRESSION.

Compression is a service which carrier procures for its own convenience, and when that service is performed in such manner as not to prejudice or prefer a particular shipper or community the act does not limit the freedom of carrier to make contracts in respect thereto. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (104).

Allowance of 50 cents per bale not found excessive. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (102).

COMPROMISE.

Written agreement providing for compromise and settlement approved in so far as it relates to matters within the Commission's jurisdiction. *Jenks Lumber Co. v. So. Ry. Co.* 58.

CONCENTRATING POINT.

Memphis, in a perfectly natural manner, became the point for concentrating lumber from near-by producing territory. Its proximity thereto and its facilities of shipment dictated its selection by mill owners. *Sondheimer Co. v. I. C. R. R. Co.* 60 (66).

CONCESSION.

Central Commercial Co. v. A. T. & S. F. Ry. Co. 166.

Tritch Hardware Co. v. R. R. R. Co. 542.

CONCURRENCE.

Where carrier participates in shipment without filing concurrence to through rate, Commission not ousted of jurisdiction to pass upon reasonableness of through rate and to award reparation. *Kindelon v. S. P. Co.* 251 (266). Where connecting line fails to concur in joint tariff of initial line naming rates to points on its line, initial line becomes responsible to shipper under its tariff. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

CONGESTION.

Commission has no right to authorize carrier to pay consignees cost of drayage on shipments accepted at points other than regular delivery points because of congestion. *Crosby & Meyers v. Goodrich Transit Co.* 175 (177).

CONNECTING LINES.

It is the duty of connecting carriers to transport and deliver at destinations, each charging for its service its legally published rate. *Corporation Commission of Oklahoma v. C. R. I. & G. Ry. Co.* 379.

Every carrier party to joint rate is jointly and severally responsible for that rate, and those carriers who actually participate in the transportation under a joint rate are jointly and severally liable in damages for the unreasonableness of that rate. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

Reparation awarded complainant to cover transfer and demurrage charges accruing because of refusal of delivering line to receive car from its connection. *Germain Co. v. N. O. & N. E. R. R. Co.* 22.

CONSIGNEE.

Carrier may waive its right to demand prepayment and accept shipment with understanding that it will collect charges upon delivery to consignee; but if it does not collect from consignee it must look to consignor for payment. *Boise Commercial Club v. Adams Express Co.* 115 (121).

Charge of \$5 is excessive where only name of consignee is changed. One dollar per car is a reasonable charge for the service. *Beekman Lumber Co. v. K. C. S. Ry. Co.* 86.

Character of no basis for difference in rates. *Silgo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (142).

CONSIGNOR.

Carrier may waive its right to demand prepayment, and accept shipment with understanding that it will collect from consignee; but if it does not collect from consignee it must look to consignor for payment. *Boise Commercial Club v. Adams Express Co.* 115 (121).

CONSOLIDATED SHIPMENTS.

The claim that, under the opinion and order of the Commission in *Wholesale Fruit & Produce Assn. v. A. T. & S. F. Ry. Co.*, 14 I. C. C. 410, it is the duty of defendant to make delivery of consolidated shipments to the various owners is not sustained. *Davies v. I. C. R. R. Co.* 186.

Concentration of less-than-carload shipments of boots and shoes at the ports is not feasible in legal sense that rates must be free from conditions and burdens in their application. *Klier Co. v. C. of G. Ry. Co.* 430 (439).

CONSTRUCTION OF THE ACT.

The language of the act being of doubtful interpretation, the Commission ought not to take jurisdiction, but should resolve the doubt in favor of the courts where claims of this nature (loss and damage resulting from discrimination in use of facilities) ordinarily belong. *Joynes v. P. R. R. Co.* 361.

In every broad and general law there are provisions which necessarily and reasonably are not applicable to particular instances. Whether or not a particular provision of the law applies to a particular common carrier subject to the law must be determined from the facts. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (245).

Since decision in the *Willson case*, many important amendments to the act have been made, but none contain anything in conflict with the interpretation placed upon it in that case. That view must therefore be considered part of the present Act. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (243).

Law does not favor a repeal by implication. It is only where there is irreconcilable conflict or repugnancy that the special or particular statute falls under the repealing clause of the general statute. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (246).

The act was clearly intended to prescribe the only rule as to the regulation of interstate rates and it should and does supersede different rules in prior statutes. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (247).

Act clearly intended to prescribe the only rule as to regulation of interstate rates, and it should and does supersede different rules in prior statutes. *West End Improvement Club v. O. & C. B. R. & B. Co.* 238 (247).

We must determine from the context, scope, and intent of the act to regulate commerce whether or not its provisions are properly applicable to defendant's railways. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (244).

CONTRACT. See also AGREEMENT.

Compression is a service which carrier procures for its own convenience, and when that service is performed in such manner as not to prejudice or prefer a particular shipper or community the act does not limit the freedom of carrier to make contracts in respect thereto. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (104).

No violation of the act can be predicated upon the fact that a carrier makes with one independent company a contract more favorable than with another for a service which the carrier is bound or undertakes to perform. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98.

Carrier can not justify discrimination between localities in refusing to stop its passenger trains at a particular place on certain days by a contract not to do so. *Loch Lynn Construction Co. v. B. & O. R. R. Co.* 396.

CONTRACTORS.

United States, state, and municipal authorities rarely lay pavements themselves. Work of this kind is usually let by contract. No reason why lower rates should be made for contractors of brick paving than should be made in favor of any other party who may have contracts for other work for public authorities. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (204).

COOLEY ARBITRATION.

Building of new roads, competition, and other causes, have forced many departures from the adjustment, until it has become materially altered, and it is inevitable and proper that it should yield to meet new and changed conditions. *New Orleans Board of Trade v. L. & N. R. R. Co.* 231 (237). We do not understand that the Cooley arbitration of 1886 undertook to fix actual rates from the several basing points to destinations in southeastern territory. *New Orleans Board of Trade v. L. & N. R. R. Co.* 231 (236). Relationships established have been departed from in many instances. *Montgomery Freight Bureau v. L. & N. R. R. Co.* 521 (529).

COST OF OPERATION.

Cost of operation of *Pierre, Rapid City & Northwestern Ry.* extremely high. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 540 (541).

COST OF PRODUCTION.

The cost of production of pineapples is less in Cuba than in Florida. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (560).

COST OF SERVICE.

The cost of movement to the carrier depends upon the weight which can be loaded into a car. The weight of the car must be hauled whether contents weigh much or little. The expense of transporting a car containing 20,000 pounds is not much greater than the expense of carrying the same car if it contains but 10,000 pounds. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72 (74).

Any-quantity rate condemned and lower carload rates established. This will not of a certainty work a decrease in net earnings. It is a false theory which seeks to force shipper to avail himself of a less-than-carload service, which is more expensive to render, for the purpose of increasing gross revenues. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (565). It costs no more to transport fire brick than any of the other kinds. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (203).

Cost of service and other factors have a more or less definite relation to the rate. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

COURTS. See **INJUNCTION.****DAMAGES.** See also **REPARATION.**

Claims for damages not directly due to violation of the act are cognizable in courts not before Commission. *Carstens Packing Co. v. O. R. R. & N. Co.* 125 (126).

DEAD WEIGHT.

The cost of movement to carrier depends upon weight loaded into car. Weight of car must be hauled whether contents weigh much or little. Expense of transporting car containing 20,000 pounds not much greater than expense of carrying same car if it contains but 10,000 pounds. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72 (74).

DELAY.

Commission without power to make awards of damages for decay of fruit and otherwise arising from a discrimination in furnishing facilities. *Joynes v. P. R. R. Co.* 361.

DELIVERING LINE.

Reparation awarded complainant to cover transfer and demurrage charges accruing because of refusal of delivering line to receive cars from its connection. *Germain Co. v. N. O. & N. E. R. R. Co.* 22.

DELIVERY.

The claim of complainant that, under the opinion and order of the Commission in *Wholesale Fruit & Produce Asso. v. A. T. & S. F. Ry. Co.*, 14 I. C. C. 410, it is the duty of defendant to make delivery of consolidated shipments to the various owners is not sustained. *Davies v. I. C. R. R. Co.* 186.

Consignee taking delivery at freight house which should have been delivered at warehouse not entitled to refund of drayage charges. *Crosby & Meyers v. Goodrich Transit Co.* 175.

DEMURRAGE.

Claim for reparation on account of exaction of demurrage charges denied upon construction of tariff provision and upon finding of fact, the question being one of notice of arrival of cars in many instances about which the testimony was too uncertain and conflicting. *Murphy Bros. v. N. Y. C. & H. R. R. R. Co.* 457.

Strong doubt as to authority of road under its tariffs to assess demurrage charges on a car detained on its line because of refusal of connection to accept it for movement to destination. *Germain Co. v. N. O. & N. E. R. R. Co.* 22 (26); *Munroe & Sons v. Mich. Cent. R. R. Co.* 27 (29).

Demurrage charges on coal held to have been unlawfully assessed, for the reason that defendant failed to notify consignee of arrival of cars, as provided in tariff. *Rossie Iron Ore Co. v. N. Y. C. & H. R. R. R. Co.* 392.

Free time on local shipments "for export" at New Orleans not found unreasonable nor discriminatory as compared with through export shipments upon which no demurrage accrues. *New Orleans Board of Trade v. I. C. R. R. Co.* 496.

Assessed without tariff authority on car detained at intermediate point through no fault of shipper, wrongfully imposed. *Monroe & Sons v. Mich. Cent. R. R. Co.* 27.

Track storage charges and free-time allowance on oats in New York not found unreasonable. *Turnbull Co. v. Erie R. R. Co.* 123.

Demurrage charge of \$2 per day found unreasonable and reduced to \$1. *Blankenship v. B. S. & C. R. R. Co.* 569.

DENSITY OF TRAFFIC. See also **VOLUME OF TRAFFIC.**

Density of traffic and competition force lower rates north of Ohio River on boots and shoes, and Lynchburg probably influenced by the adjustment, creating different conditions than at southeastern destinations. *Kiser Co. v. C. of G. Ry. Co.* 430 (441).

DEPOT. See also **TERMINAL.**

Without determining jurisdiction of Commission to require erection or continuance of station facilities, facts have been examined and found not to justify an affirmative order. *Snook v. C. R. R. Co. of N. J.* 375.

DESTINATION.

Rate on big-vein coal, Georges Creek basin to tide water, destined over the piers to points outside the capes, discriminatory when compared with rates on small-vein coal between the same points. *American Coal Co. v. B. & O. R. R. Co.* 149.

DEVICE.

Mere interposition between lumber mill and carrier of a paper railroad incorporation that calls itself a common carrier, but is owned by the mill or its proprietors, does not give legality to the so-called tap-line allowances or meet the requirements of the Commission. *Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co.* 338.

DEVICE—Continued.

Neither shippers nor carriers can evade the law by means of paper organization, nor would utmost good faith justify a relation which actually works out a violation of the law. *Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co.* 98.

Billing locally to intermediate out-of-line point and using carrier's agent as rebilling agent to avoid payment of through charges. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (141).

DIFFERENTIAL.

Claim for differential on slack and nut coal under the lump rate denied, record not containing sufficient data upon which to warrant Commission in establishing it. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (486).

DISCRETION.

Rail carriers from Grand Rapids ought not to be required to make rates to meet water competition or to equalize for complainant advantages of a business rival which moves its products to Chicago by its own water line. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

DISCRIMINATION.

If particular point is discriminated against, fact that removal of discrimination would disturb rates at other points of little weight; but when change would be followed by changes at competitive points which restore the same relationship, and existing rates are not shown excessive, justification for change not found. *Montgomery Freight Bureau v. L. & N. R. R. Co.* 521 (520).

On lumber from southwestern points through Memphis to northeastern points, combination rate applied with maximum "shrinkage," total rate never to be less than through rate from origin to destination. Owing to dissimilar conditions, reshipping privilege at Memphis, if proper rates applied, not an undue discrimination against Cairo. *Sondheimer Co. v. I. C. R. R. Co.* 60.

Section 15 in regard to allowances not applicable where allowance made to compress company not owner of the cotton. If a violation of the act results from more favorable contracts with the warehouse company than to complainants, it must be because of discrimination under section 3. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (105).

Where discontinuance of a certain privilege with respect of one commodity would not benefit those shipping another commodity to whom it is denied, and where the denial to them does not benefit those to whom it is granted, the discrimination is not undue. *Wholesale Fruit & Produce Asso. v. A. T. & S. F. Ry. Co.* 596.

Carrier can not justify unjust discrimination between localities in refusing to stop its passenger trains at a particular place on certain days by a contract not to do so. *Loch Lynn Construction Co. v. B. & O. R. R. Co.* 396.

Rates on big-vein coal going over the piers to destinations outside the two capes are unreasonable and discriminatory and ought not to exceed the rates in effect at the same time on small-vein coal from the Pennsylvania and West Virginia fields when water borne to the same destinations. *American Coal Co. v. B. & O. R. R. Co.* 149 (154).

The lease at a nominal rental of an elevator erected by the defendants on their right of way at Argenta, Ark., operates as an unlawful preference in favor of the lessee and as an unjust discrimination against dealers and shippers of grain at Little Rock. *Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co.* 158.

DISCRIMINATION—Continued.

It must be left entirely with carrier to determine time, place, and amount of an excursion rate, but it is conceivable that by granting of reduced transportation under the guise of excursion rates most serious and unjustifiable discrimination might be worked. *Weber Club & Intermountain Fair Asso. v. O. S. L. R. R. Co.* 212 (216).

Carrier serving one point may be guilty of discrimination against another point not on its own line, where the separate carriers unite in joint through rates with common connecting lines to destination. *Indiana-Steel & Wire case*, 16 I. C. C. 155, followed. *Railroad Commission of Tennessee v. A. A. R. R. Co.* 421.

Complaint of undue discrimination in coal rates to Point Pleasant, N. J., as compared with rates on coal to other stations on the coast of New Jersey, not sustained by the evidence, short-line competition to the other points justifying the difference. *Ocean County Coal Co. v. C. R. R. Co. of N. J.* 383.

Intervenors insisted that to make order prayed for would make a discrimination against them. The matter of adjusting rates relatively to meet conditions that will arise after the reduction herein ordered is made rests primarily with the defendants. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (229).

Proportional rates limited to through movements from defined territory or groups seem proper. But a proportional rate, use of which is limited to shipments over a particular line, discriminates against shippers over another line. *Bascom Co. v. A. T. & S. F. Ry. Co.* 354 (357).

A discrimination involved in the carrying of personal baggage for a passenger without extra charge is not undue as against a passenger without baggage. *Herbeck-Demer Co. v. B. & O. R. R. Co.* 88.

Application of proportional rates on grain from Omaha and Council Bluffs through Ohio River crossings and not through Henderson, Ky., destined to southeastern points, a discrimination. *Henderson Elevator Co. v. I. C. R. R. Co.* 573.

In cases of damages for decay and other loss resulting from discrimination in delaying fruits Commission may ascertain whether the discrimination alleged actually occurred. *Joynes v. P. R. R. Co.* 361.

The failure of defendant carrier to stop its passenger trains on Sunday at Mountain Lake Park, Md., a station on its line, is not found to be unreasonable discrimination in view of all the facts, circumstances, and conditions appearing. *Loch Lynn Construction Co. v. B. & O. R. R. Co.* 396.

Discrimination alleged between two localities. Market competition at favored point and failure of competitive relationship between the two points in respect of the commodity involved, justifies different rates. *Southern Bitulithic Co. v. I. C. R. R. Co.* 300.

Any allowance to or division with a tap line which is an adjunct or plant facility is a preference and discrimination and an unlawful departure from the published rate. *Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co.* 338.

It is one purpose of the act to preserve competitive conditions between common carriers subject to its jurisdiction, but it is another purpose to prevent undue discrimination. *Railroad Commission of Tennessee v. A. A. R. R. Co.* 418 (421).

Provisions of section 22 of the act do not entirely exempt issuance of excursion tickets from the operation of the undue-discrimination provision of the act. *Weber Club & Intermountain Fair Asso. v. O. S. L. R. R. Co.* 212.

DISCRIMINATION—Continued.

Duty of Commission to establish just and reasonable rates available for all shippers alike without discrimination in favor of any shipper by reason of an agreement with carrier. *Hood & Sons v. Del. & Hud. Co.* 15.

Whether or not the grouping of points of origin or points of destination constitutes undue or unjust discrimination must be determined from the facts in each case. *Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co.* 169 (173).

Reconsignment is a privilege—not a right to be demanded by shippers—and can only be required where necessary to correct unjust discrimination. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (487).

Rates through Memphis on lumber from competitive producing points in Mississippi to competitive northeastern consuming points found unduly discriminatory against Cairo, Ill. *Sondheimer Co. v. I. C. R. R. Co.* 60.

To accept shipment without prepayment is no more than to extend credit to consignor, and this within reasonable and nondiscriminatory limits it may do. *Boise Commercial Club v. Adams Express Co.* 115 (121).

Cancellation of certain joint rates, resulting in advance, in order to remove a discrimination in favor of complainant, not disturbed. *Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co.* 189.

Section 2 precludes the allowance of commutation rates to school children unless the same rates are open to all children within the age limit. *In re Commutation Tickets to School Children*, 144.

It is carrier's right to demand prepayment on all shipments and it may not distinguish between persons who pay in advance and those who do not. *Boise Commercial Club v. Adams Express Co.* 115 (121).

Commission without power to make awards of damages for decay of fruit on account of delay arising from a discrimination in furnishing unloading facilities. *Joyes v. P. R. R. Co.* 361.

Charge of undue discrimination may not be predicated on lower rates on different commodities where commodities are not competitive. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (30).

Mileage, commutation, or excursion tickets, when published for sale, must be open impartially to all. *Weber Club & Intermountain Fair Asso. v. O. S. L. R. R. Co.* 212 (216).

Any discrimination which exists must not exceed that which is warranted by the differences in circumstances and conditions. *Sondheimer Co. v. Ill. Cent. R. R. Co.* 60 (64).

Whether or not discrimination is undue is a fact to be found, not a matter of law. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (105).

Dissimilarity of circumstances and conditions may justify a discrimination which is not undue. *Sondheimer Co. v. I. C. R. R. Co.* 60 (64).

Act does not prohibit all discrimination, but only that which is undue. *Herbeck-Demer Co. v. B. & O. R. R. Co.* 88; *Loch Lynn Construction Co. v. B. & O. R. R. Co.* 396.

DISCRIMINATION—CLASSIFIED LIST.**ARTICLES.**

Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. 30.

Bascom Co. v. A. T. & S. F. Ry. Co. 354.

Manahan v. N. P. Ry. Co. 95

Wholesale Fruit & Produce Asso. v. A. T. & S. F. Ry. Co. 596.

FACILITIES.

Joyes v. P. R. R. Co. 361.

DISCRIMINATION—CLASSIFIED LIST—Continued.**LOCALITIES.**

- American Coal Co. v. B. & O. R. R. Co. 149.
 Bascom Co. v. A. T. & S. F. Ry. Co. 354.
 Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co. 158.
 Du Pont de Nemours Powder Co. v. P. R. R. Co. 544.
 Federal Sugar Refining Co. v. B. & O. R. R. Co. 40.
 Henderson Elevator Co. v. I. C. R. R. Co. 573.
 Memphis Freight Bureau v. K. C. S. Ry. Co. 90.
 Merchants Cotton Press & Storage Co. v. I. C. R. R. Co. 98.
 Montgomery Freight Bureau v. L. & N. R. R. Co. 521.
 Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co. 169.
 Ocean County Coal Co. v. C. R. R. Co. of N. J. 383.
 Olympia Brewing Co. v. N. P. Ry. Co. 178.
 Railroad Commission of Tennessee v. A. A. R. R. Co. 418.
 Saginaw Board of Trade v. G. T. Ry. Co. 128.
 Sondheimer Co. v. I. C. R. R. Co. 60.
 Southern Bitulthic Co. v. I. C. R. R. Co. 300.
 Weber Club & Intermountain Fair Asso. v. O. S. L. R. R. Co. 212.
 Wholesale Fruit & Produce Asso. v. A. T. & S. F. Ry. Co. 506.

PERSONS.

- Herbeck-Demer Co. v. B. & O. R. R. Co. 88.
 In re Commutation Tickets to School Children, 144.
 Montague & Co. v. A. T. & S. F. Ry. Co. 72.

DISTANCE.

- Length of haul and other transportation factors have a more or less definite relation to the rate that carrier may reasonably demand for a transportation service. Memphis Cotton Oil Co. v. I. C. R. R. Co. 313 (318).
 Rate on hemp in carloads from Pacific Coast terminals to Bismarck, N. Dak., not found to be discriminatory as compared with slightly higher rate from same points to Chicago. Hellstrom v. N. P. Ry. Co. 580.
 Distance is an important, but not necessarily a controlling factor in rate questions. Whether or not it is conclusive depends upon the facts in the case. Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co. 169 (172).
 In all group systems there is an inequality of rates when distance alone is considered, as between points on one side of a group and those on the other side. Saginaw Board of Trade v. Grand Trunk Ry. Co. 128 (136).

DIVISION.

- It is left to defendants to arrange between themselves, according to their established rules, the division of the earnings and of the reparation here awarded. Davenport Pearl Button Co. v. C. B. & Q. R. R. Co. 193 (194).
 Joint through rate from longer distance point lower than from intermediate point. It would perhaps be difficult for defendants to justify participating with the L. V. in the higher rate from which the L. V. gets no division. Unless unusual conditions warrant this adjustment it should be corrected at once. Males Co. v. L. & H. R. Ry. Co. 280 (282).
 A through rate regularly published between two points and available under the tariff over several different routes is not nullified as to one such route by failure of participating carriers to agree upon divisions over that route. Germain Co. v. N. O. & N. E. R. R. Co. 22.
 If defendants are unable to agree upon the manner of constructing the rates herein ordered or upon the divisions of such rates, Commission will enter such supplementary order as may be necessary. Farmers' Cooperative & Educational Union v. G. N. Ry. Co. 406 (412).

DIVISION—Continued.

Are matters of private agreement, and for that reason, generally speaking, are of no special concern to shippers, nor are they essential to legalize a published through rate. *Germain Co. v. N. O. & N. E. R. R. Co.* 22 (24).

Divisions of through rates which carrier accepts as its proportion not measure of reasonableness of its separately established rates. *Manahan v. N. P. Ry. Co.* 95 (97).

Through routes and joint rates prescribed, but fixing of divisions left to carriers. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (485).

Commission will determine amount in case of failure of defendants to agree among themselves. *Germain Co. v. N. O. & N. E. R. R. Co.* 22 (25).

Can not be taken as measure of reasonableness of carrier's separately established rates. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

DOUBLE-DECK CARS.

When carrier unable to furnish, two single-deck cars should be used, when reasonable notice has been given of desire to use double-deck car. *Corn Belt Meat Producers' Asso. v. C. B. & Q. R. R. Co.* 533.

Ordered, but single-deck cars furnished. *Carstens Packing Co. v. So. Pac. Co.* 6.

DRAYAGE.

Commission no right to authorize carrier to pay consignee cost of drayage on shipments accepted at points other than regular delivery points, because of congestion. *Crosby & Meyers v. Goodrich Transit Co.* 175 (177).

Free delivery of cotton in Memphis offset by allowance in South Memphis. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (103).

DRUMMERS' SAMPLES.

Whether samples of a drummer ought properly be carried as baggage not decided. *Herbeck-Demer Co. v. B. & O. R. R. Co.* 88 (89).

EARNINGS.

Evidence that rates on agricultural implements might be reduced without impairing carrier's revenues, standing alone, has little value and forms no basis upon which to determine that rates in controversy are unreasonable. *Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co.* 189 (192).

ELECTRIC LINES. See **STREET RAILROAD.**

ELEVATOR ALLOWANCE.

To Bunch Company for milling their own grain an unlawful preference. *Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co.* 158.

EQUAL TREATMENT.

Carrier must accord to points on its own line which are entitled to similar treatment equal facilities of shipment and relatively equal rates. *Sonderheimer Co. v. I. C. R. R. Co.* 60 (64).

EQUALIZING RATES.

Rail carriers from Grand Rapids ought not to be required to make rates to meet water competition or to equalize for complainant advantages of a business rival which moves its products to Chicago by its own water line. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

Geographical disadvantages can not well be overcome by any proper adjustment of transportation charges. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (33).

Improper for Commission to equalize disadvantages of location and other conditions. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128 (137).

EQUITY JURISDICTION.

The Commission is not vested with powers of a court of equity to relieve from hardships resulting from improvident arrangements between the parties. *Werner Saw Mill Co. v. I. C. R. R. Co.* 388.

ERROR IN TARIFF.

Erroneous insertion of "per net ton" changed to "gross ton of 2,240 pounds." *American Trust & Savings Bank v. C. M. & St. P. Ry. Co.* 11.

EXCURSION RATES.

If carrier publishes excursion rates, they must be open impartially to all who avail themselves of the conditions of the ticket. *Weber Club & Inter-mountain Fair Asso. v. O. S. L. R. R. Co.* 212 (216).

EXPRESS RATES.

A system must be developed by which express rates shall conform to standards to which railroads have in a great measure conformed and which the law enjoins. *Boise Commercial Club v. Adams Express Co.* 115 (122).

New York to Boise, Idaho, violate the general principle that through rate shall not exceed lowest combination of locals between same points. *Boise Commercial Club v. Adams Express Co.* 115.

EVIDENCE.

Under a stipulation entered into by and between the parties, the testimony taken in another case was read in evidence and the case was submitted without any additional testimony whatever. *Bartles Oil Co. v. C. M. & St. P. Ry. Co.* 146 (147).

FACILITIES.

Discrimination alleged in furnishing facilities for unloading of fruits, resulting in decay and other loss on account of delay. *Held*, while Commission may ascertain if there was in fact a discrimination, it may not award damages for such losses. *Joynes v. P. R. R. Co.* 361.

Carrier must accord to points on its own line which are entitled to similar treatment equal facilities of shipment. *Sondheimer Co. v. I. C. R. R. Co.* 60 (64).

FALSE BILLING.

Competition between the different grades of brick is of such a character that no scheme of classification is possible which will not permit, if it does not encourage, the misbilling of the product in order to secure lower rates. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (204).

Coal falsely billed, in which carrier's agents joined. *Held*, That as neither party comes before Commission with clean hands no relief order will be entered. *Silgo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139.

FEEDING CHARGES.

Caused on account of extra time and delay consumed on account of washout on billed route, necessitating diversion, not found unreasonable. *Carstens Packing Co. v. O. R. R. & N. Co.* 125.

FEEDING-IN-TRANSIT.

Since filing of petition certain changes have been made by defendants in their feeding-in-transit tariffs, which now remove all objection of complainant upon this point. *Corn Belt Meat Producers' Asso. v. C. B. & Q. R. R. Co.* 533.

FIRE.

Shipment at concentration point destroyed by fire. Claim for refund of local charges denied. *Anderson, Clayton & Co. v. St. L. & S. F. R. R. Co.* 12.

FIRE BRICK. See COMMODITIES.

FLOATAGE.

Terminals within lighterage limits of New York Harbor are railroad terminals, none the less so because they are reached by ferries instead of bridges. To and from these places the defendants are common carriers "wholly by railroad" within meaning of section 1. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (46).

FOREIGN COMMERCE.

Rate on cement from Galveston, Tex., to Magdalena, Mex., made by combination on Guaymas or Nogales. *Held*, in absence of specific through rate, combination on Nogales was lawful rate, and that rate from Galveston to Nogales is reasonable and should be maintained for two years. *Awbrey & Semple v. G. H. & S. A. Ry. Co.* 267.

Minimum weights on tobacco from Kentucky and Tennessee into Mexico found excessive. *Black Horse Tobacco Co. v. I. C. C. R. R. Co.* 588.

FOREIGN LINES.

No reason why Commission can not take notice of lawful rate established by another sovereign, applicable to shipments in its own domain. *Awbrey & Semple v. G. H. & S. A. Ry. Co.* 267 (271).

FREE TIME.

Alleged discrimination in permitting only ten days free time on forest products to New Orleans "for export," while unlimited free time allowed on through export shipments. *Held*, not unjustly discriminatory or unreasonable. *New Orleans Board of Trade v. I. C. R. R. Co.* 496.

Allowance in New York not found unreasonable. *Turnbull Co. v. Erie R. R. Co.* 123.

FREE TRANSPORTATION. See GOVERNMENT RATES.**GOVERNMENT CONTRACTORS.**

No reason why lower rates should be made for contractors of brick paving than should be made in favor of any other party who may have contracts for other work for public authorities. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (204).

GOVERNMENT RATES.

Commission has no power under the law to require reduced rates for United States, state, or municipal governments. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (204).

GRADES.

Grades and other transportation factors have a more or less definite relation to the rate that a carrier may reasonably demand for a transportation service. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

GRADUATE SCALE.

Express rates, New York to Boise, Idaho, single and double. *Boise Commercial Club v. Adams Express Co.* 115 (117).

GROSS TON.

Tariff amended to provide for assessment of charges on "gross ton" weight of 2,240 pounds. *American Trust & Savings Bank v. C. M. & St. P. Ry. Co.* 11.

GROUP RATES.

Group rates, particularly on such a commodity as coal, are advantageous to the public, the carriers, and the mine owners alike. *American Coal Co. v. B. & O. R. R. Co.* 149 (155).

GROUP RATES—Continued.

While Commission has frequently held that through rates between certain points should not exceed the combination of local rates between the same points, this is not a universal rule, especially in the case of common rates from points in each of the contiguous group territories. *Wille Bros. v. A. T. & S. F. Ry. Co.* 288 (289).

Montchanin, Del., while in "Philadelphia Basis territory," not accorded those rates, the Pennsylvania R. R. refusing to establish joint rates with the Reading, on which Montchanin is located. *Held*, such adjustment operates as a discrimination against Montchanin. *Du Pont de Nemours Powder Co. v. P. R. R. Co.* 544.

Fact that no group rates in this country have been subjected to less criticism than the rates to and from percentage-basis territory and the Atlantic coast is some evidence of the care with which the system has been developed. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128 (132).

When it was found that the 85-cent rate was unreasonable from Mississippi River points, it was also unreasonable from all points in the territory which took the same rate on traffic transported under similar circumstances and conditions. *Kindelon v. S. P. Co.* 251 (254).

Percentages of Chicago rates from Atlantic seaboard to Saginaw, Flint, and other points in Saginaw Valley not found too high when compared with percentages that fix rates to other groups in adjacent territory. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128.

The rates complained of are blanketed over a considerable territory of origin, and again over a considerable territory of distribution. *Held*, That disruption of such grouping would be unwarranted. *Lautz Bros. & Co. v. L. V. R. R. Co.* 167.

Whether or not the grouping of points of origin or points of destination constitutes undue or unjust discrimination must be determined from the facts in each case. *Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co.* 169 (173).

In all group systems there is an inequality of rates when distance alone is considered, as between points on one side of a group and points on the other side. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128 (136).

Without making any specific changes in rates, certain territorial regroupings are prescribed in cattle rates from Iowa points to Chicago. *Corn Belt Meat Producers' Asso. v. C. B. & Q. R. R. Co.* 533.

HEARING.

Upon application of complainant, an examiner will be delegated to take testimony upon the various reparation claims involved in these cases, and upon that record the parties will be further heard and proper orders made. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 447.

Carriers notified of hearing and failing to appear have had their day in court and can not now be heard to say that no order can be made against them to share in the reparation awarded. *Kindelon v. S. P. Co.* 251 (255).

ICING CHARGE.

No provision in tariff for assessment of icing charge. Shipper paid sum demanded. Commission has jurisdiction to inquire what was a reasonable charge and to order repayment of whatever carrier has collected over and above such reasonable charge. *Memphis Freight Bureau v. K. C. S. Ry. Co.* 90.

IMPORT RATE.

While foolish for carrier to do so, maintenance of lower import rate than domestic rate not unlawful. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (566).

Carriers should not nullify Tariff Acts. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (561).

INCIDENTAL SERVICE.

Service of providing a place where consignments can be handled and in assorting into lots packages marked with names of several dealers to whom they are consigned is a thing of value for which shipper may be required to pay. *Davies v. I. C. R. R. Co.* 186 (188).

INDUSTRIAL RATES.

While at the common law a common carrier may not have been compelled to accord traffic coming off the rails of other carriers and not originating on its own lines the necessary facilities for through movement, under the act to regulate commerce, this is no longer the law with regard to interstate carriers. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (480).

A. C. & S. F. system refused to establish through routes from Walsenburg coal district in Colorado to certain Texas and New Mexico points, because it has located on its own lines mines supplying this territory. *Held*, No excuse for refusal to establish through routes. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479.

INDUSTRIAL SWITCHING.

No allowance may be made for, the service performed being a plant facility, the expense of which should be borne entirely by the complainant and which no railroad under the guise of the absorption of a switching charge may lawfully sustain. *Crane Iron Works v. C. R. R. Co. of N. J.* 514.

INFORMAL ADJUSTMENT.

It is difficult to understand why carrier should decline to make application for informal adjustment, and compel complainant to file formal complaint, and then, by answer and stipulation, admit the allegations and agree to submission of the case of the pleadings. *Davenport Pearl Button Co. v. C. B. & Q. R. R. Co.* 193 (194).

INITIAL LINE.

Where initial line publishes joint rate not concurred in by connecting lines, and shipper is compelled to pay a greater charge than that named in the tariff, he may recover from initial line the difference certainly if the rate posted is found reasonable. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

INJUNCTION.

Plaintiff restrained filing of proposed rates by injunction; in order to bring complaint to Commission, injunction modified to permit filing of tariffs in regular manner, but enforcement postponed pending litigation before Commission. *Kiser Co. v. C. of G. Ry. Co.* 430 (431).

Court dismissed bill to enjoin proposed rates on ground that reasonableness of rates was matter within Commission's exclusive jurisdiction. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (314).

INSTRUCTIONS.

In absence of specific through routing by shipper, it is duty of carrier to route shipments by cheapest reasonable route over which lawfully established rates are in force. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 292 (294).

INSTRUCTIONS—Continued.

Where a shipper gives instructions to forward his goods by a particular route carrier is relieved of duty of ascertaining whether the goods could be forwarded by another route at a lower rate. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 292 (294.)

Carriers may not disregard instructions of shippers as to intermediate routing, except when tariff of initial line reserves the right to dictate intermediate routing. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 292 (294).

Shipper directed routing, resulting in higher charge; no evidence of unreasonableness of rate charged. Complaint dismissed. *South Canon Coal Co. v. C. & S. Ry. Co.* 286.

Defendants received shipment without routing instructions and ought to have forwarded it over cheapest route. *Germain Co. v. N. O. & N. E. R. R. Co.* 22 (25).

INTERCHANGE OF CARS.

Reparation awarded to cover transfer and demurrage charges accruing because of refusal of delivering line to receive car from its connection. *Germain Co. v. N. O. & N. E. R. R. Co.* 22.

INTERMEDIATE ROUTING.

Carriers may not disregard instructions of shippers as to intermediate routing, except when tariff of initial line reserves the right to dictate intermediate routing. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 292 (294).

INTERNAL SWITCHING. See INDUSTRIAL SWITCHING.

Allowance made at South Memphis for handling cotton from interchange tracks to compresses and warehouses, in order to place South Memphis dealers on a parity with Memphis dealers where there is a free-store-door delivery, not objectionable. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (103).

INTERSTATE COMMERCE.

Shipments accepted for transportation from St. Louis to Leadville, Colo., and delivered by M. P. to D. & R. G. at Pueblo, neither shipper or consignee intervening at Pueblo or elsewhere. These facts constitute an arrangement for through and continuous carriage which clearly brings the transportation within the scope of the act to regulate commerce. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (226).

Where commodity is purchased in and shipped from one state to a point in another state the transaction is indelibly impressed with the character of interstate commerce and the various mutations through which the article passes and the handlings which it undergoes while in transit are merely incidental to the movement. *Hood & Sons v. Del. & Hud. Co.* 15.

Every carrier that participates in the carriage of any commodity or that performs any part of the transportation in a continuous passage from a point of origin in one state to a destination in another state is engaged in interstate commerce and subject to the jurisdiction of the act. *Hood & Sons v. Del. & Hud. Co.* 15.

Shipment between two interstate points stored and subsequently reconsigned to point in same state. *Held*, that shipment to ultimate destination was a state movement. *Acme Cement Plaster Co. v. C. & A. R. R. Co.* 220.

INTERURBAN LINES.

If interurban lines were to be exempted from the requirements of the act on the ground that they are street railways it would be impossible to so administer the law as to correct the evils and mischief at which it was aimed. *West End Improvement Club v. O. & C. B. R. & B. Co.* 238 (245).

INTERVENERS.

- Baer Bros. Mercantile Co. *v.* M. P. Ry. Co. 225.
 Bentley & Olmsted Co. *v.* L. S. & M. S. Ry. Co. 56.
 Blankenship *v.* B. S. & C. R. R. Co. 569.
 Greater Des Moines Committee *v.* C. R. I. & P. Ry. Co. 54, 57.
 Corn Belt Meat Producers' Asso. *v.* C. B. & Q. R. R. Co. 533.
 Farmers' Cooperative & Educational Union *v.* G. N. Ry. Co. 406.
 Loch Lynn Construction Co. *v.* B. & O. R. R. Co. 396.
 Memphis Cotton Oil Co. *v.* I. C. R. R. Co. 313.
 Merchants' Cotton Press & Storage Co. *v.* I. C. R. R. Co. 98.
 Ottumwa Commercial Asso. *v.* C. B. & Q. R. R. Co. 413.
 Sondheimer Co. *v.* Ill. Cent. R. R. Co. 60.

IN-TRANSIT. See **MILLING-IN-TRANSIT, RESHIPING PRIVILEGE, AND TRANSIT PRIVILEGES.**

JOINT RATE.

Through route and joint rate established on posts and poles from Beaudette, Minn., to points in North and South Dakota, 3 cents over Warroad to same points. Partridge Lumber Co. *v.* G. N. Ry. Co. 276 (279).

On complaint asking for establishment of lower joint through rate, Commission finds one factor of existing combination unreasonable, leaving to carriers the duty to make the rate prescribed in any such way as may properly effect the change required. Farmers' Cooperative & Educational Union *v.* G. N. Ry. Co. 406.

The law does not require the Commission in all cases where no through route and joint rate exists to establish a route and fix a rate applicable thereto, but only empowers us to do so in a proper case for the purpose of giving effect to the act. Baer Bros. Mercantile Co. *v.* M. P. Ry. Co. 225 (228).

Withdrawal of joint through rates, resulting in application of higher locals, condemned, and, joint rates having been subsequently reestablished, reparation awarded on shipments upon which charges had been assessed at higher rate. Corporation Commission of Oklahoma *v.* C. R. I. & G. Ry. Co. 379.

Complaint that cancellation of joint tariffs had resulted in unreasonable rates on threshing machines and engines from Hopkins, Minn., to local points on the lines of defendants, not being sustained by the evidence, is dismissed. Minneapolis Threshing Machine Co. *v.* C. St. P. M. & O. Ry. Co. 189.

Every carrier party to a joint rate is jointly and severally responsible for that rate, and those carriers who actually participate in the transportation under a joint rate are jointly and severally liable in damages for the unreasonableness of that rate. Black Horse Tobacco Co. *v.* I. C. R. R. Co. 588.

Through routes and joint rates established from Walsenburg coal district in Colorado to Texas and New Mexico points on the A. T. & S. F. system, no divisions being prescribed. Cedar Hill Coal & Coke Co. *v.* C. & S. Ry. Co. 479 (485).

A through rate regularly published between two points and available under the tariff over several different routes is not nullified as to one such route by failure of participating carriers to agree upon divisions over that route. Germain Co. *v.* N. O. & N. E. R. R. Co. 22.

Initial line filing and posting tariff naming joint rates to points on connecting line, in which tariff connecting line does not concur, becomes responsible to shipper under its tariff. Black Horse Tobacco Co. *v.* I. C. R. R. Co. 588.

Petition for establishment denied. Greater Des Moines Committee *v.* C. R. I. & P. Ry. Co. 54; Bentley & Olmsted Co. *v.* L. S. & M. S. Ry. Co. 56.

Divisions not essential to legalize. Germain Co. *v.* N. O. & N. E. R. R. Co. 22 (24).

JUDICIAL NOTICE.

The rights which courts have to take judicial notice of certain classes of facts is extended in the case of the Commission to the entire range of its experience with transportation problems and embraces all the knowledge that it has gathered from any source. *Joynes v. P. R. R. Co.* 361 (366).

No reason why Commission can not take judicial notice of lawful rate established by another sovereign applicable to shipments in its own domain.

Awbrey & Semple v. G. H. & S. A. Ry. Co. 267 (271).

JURISDICTION. See also **INTERSTATE COMMERCE**; **STREET RAILROADS.**

Where transportation service has been rendered for which no tariff authority whatever exists, and where shipper paid sum claimed by carrier for that service, Commission has jurisdiction to inquire what was a reasonable charge for the service and to order repayment of whatever carrier has collected over and above such reasonable charge. *Memphis Freight Bureau v. K. C. S. Ry. Co.* 90.

Language of the act being of doubtful interpretation, the Commission, which is a special tribunal of limited powers, ought not to take jurisdiction, but should resolve the doubt in favor of the courts where claims of this nature (loss and damage resulting from discrimination in use of facilities) ordinarily belong. *Joynes v. P. R. R. Co.* 361.

The general rule that a tribunal, whose authority is invoked by a complaint filed before it, must determine whether the subject-matter is within its jurisdiction before it may consider the merits of the controversy does not in all cases necessarily control an administrative body like this Commission. *Snook v. C. R. R. Co. of N. J.* 375.

It must not be inferred that Commission disclaims jurisdiction over lighterage service. On the contrary, that service must be conducted in accordance with requirements and prohibitions of the act. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (45).

Where intermediate line participates in transportation without concurrence, Commission not ousted of jurisdiction to pass upon reasonableness of through rate and to award reparation. *Kindelon v. S. P. Co.* 251 (266).

LEASE.

Carrier, leasing part of its right of way and erecting thereon an expensive elevator, at a nominal rental operates as an unlawful preference. *Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co.* 158.

LEGAL RATE.

Where a transportation service has been rendered for which no tariff authority whatever exists and where shipper paid sum claimed by carrier for that service, Commission has jurisdiction to inquire what was a reasonable charge for the service and to order repayment of whatever carrier has collected over and above such reasonable charge. *Memphis Freight Bureau v. K. C. S. Ry. Co.* 90.

There being no joint rate from Pewee Valley, Ky., the point of origin, under Rule 5b, Tariff Circular 17-A, the lowest combination made up of local rate back to Louisville plus a proportional rate from Louisville to Pittsburgh, the destination point, was properly applicable. *Crutchfield & Woolfolk v. L. & N. R. R. Co.* 302.

Minimum rule, as construed by accounting officials, was grossly unjust and unreasonable. But the law plainly provides for but one method of getting rid of the unreasonableness or injustice of duly established rates, and that is by their condemnation upon complaint and investigation. *Old Dominion Copper & Smelting Co. v. P. R. R. Co.* 309 (312).

LEGAL RATE—Continued.

Shipper in following routing instruction in tariff sent five carloads of lumber via a route over which there was no rate applicable except the class rate. Tariff being in error, carriers' duty was to treat shipments as though un-routed and to forward them via junction making lowest combination of rates. *Saner-Whiteman Lumber Co. v. T. & N. O. R. R. Co.* 290.

A stipulation as to almost any fact is ordinarily accepted as conclusive, but as Commission is charged with enforcement of lawful rates it is not able at all times to accept views of parties as to what in fact is the lawful rate between given points on a specified commodity. *Germain Co. v. N. O. & N. E. R. R. Co.* 22 (24).

Only by faithful application of tariffs can discrimination and injustice be prevented. By the law there is placed upon the accounting officers of carriers special individual responsibility in this respect which they can not ignore without incurring liabilities. *Old Dominion Copper & Smelting Co. v. P. R. R. Co.* 309 (312).

There being two rates in effect, shipper justified in demanding lower, and carrier may not lawfully collect more. Commission is likewise justified in holding that lower is reasonable, or at least not unreasonably low, because it is voluntary rate of carrier. *Boise Commercial Club v. Adams Express Co.* 115 (121).

In the absence of a published specific through rate between two points, the tariff indicating no specific way of making up a through rate, the lowest combination of local rates over the route of the movement is the lawful through charge. *Contact Process Co. v. N. Y. C. & St. L. R. R. Co.* 184.

A complainant is not deprived of his right to a reasonable rate by the fact that the defendants, through neglect of the rules of this Commission as to publication of their tariffs, had failed to establish that rate in legal form. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

There can be but one lawful rate between two points and the law takes no cognizance whatever of the distinction made by express companies between prepaid and collect shipments. *Boise Commercial Club v. Adams Express Co.* 115 (121).

Rates charged and collected must be in accordance with tariff legally effective whether same was issued in compliance with any private agreement with shipper or not. *Hood & Sons v. Del. & Hud. Co.* 15.

Collection of lawful rate is a duty imposed on carrier by law, and it is given a lien on property transported to enforce payment of charges. *Boise Commercial Club v. Adams Express Co.* 115 (121).

LESS THAN CARLOAD. See CARLOAD.**LIEN.**

Collection of lawful rate is a duty imposed on carrier by law, and it is given a lien on property transported to enforce payment of charges. *Boise Commercial Club v. Adams Express Co.* 115 (121).

LIGHTERAGE.

By extension of lines to New York by lighterage regulations from the exercise of business discretion and not from compliance with requirements of the act defendants incur no liability, under the act, to extend their lines to Yonkers or other near-by communities. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40.

Because defendant may not be able to lighter plaintiff's shipments as promptly as desired, plaintiff no right to lighter his own shipments and then claim reparation since there was no tariff permitting the allowance. *Barret Mfg. Co. v. C. B. R. Co. of N. J.* 464.

LIGHTERAGE—Continued.

It must not be inferred that Commission disclaims jurisdiction over lighterage service. On the contrary, that service must be conducted in accordance with requirements and prohibitions of the act. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (45).

LIMITATION.

Claim presented against delivering line, not against connecting lines, not barred as to delivering line, though complaint no standing as against the other lines, and the fact that the delivering line who has collected an overcharge has paid it to another carrier does not excuse it from repayment of same. *Rehberg & Co. v. Erie R. R. Co.* 508.

Commission can not sanction a practice that would permit the revival of claims barred by the statute by subsequently attaching them to other claims presented within the prescribed period. *Werner Saw Mill Co. v. I. C. R. R. Co.* 388 (390).

Reparation in this case awarded only from date of filing of complaint in another case, in which case reparation was awarded only from filing of complaint. *Kindelon v. S. P. Co.* 251 (254).

Congress intended to give one year within which there might be presented to the Commission claims valid prior to the approval of the law, but which would thereupon have been barred without notice. *Woodward & Dickerson v. L. & N. R. R. Co.* 9 (10).

The Commission has no jurisdiction to deal with complaints for reparation in any way unless filed with or presented to it within the period specified in the statute. *Werner Saw Mill Co. v. I. C. R. R. Co.* 388.

LOADING.

Impracticable in shipping cans of milk from different destinations to require an exact number of cans to be placed upon a car short of the absolute limit of the capacity, and while a number may be specified as an approximate load for the purpose of applying a certain rate to that number, provision must be made for a variable number of cans. *Hood & Sons v. Del. & Hud. Co.* 15 (19).

Brick is a very desirable traffic. It moves in large volume, can be loaded to full capacity of cars, and is not subject to loss and damage. Paving and low-grade fire brick move in any sort of freight equipment and are a low-grade commodity. These elements seem to call for the making of low rates. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (207).

It is in the interest of economical transportation that cars containing light and bulky articles should be loaded as heavily as possible, and it is equally plain that carrier can afford, to an extent, to decrease its rates in proportion as the loading increases. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72 (75).

One person by exercising greater skill or more care may load a car more compactly than another. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72 (74).

LOCAL RATE.

From intermediate point, on commodity which is not produced at that point, is a paper rate, and of no interest to complainant except as it may be utilized in order to avoid payment of through rate from distributing point. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (142).

Local rates fixed on all classes of merchandise between all points on the Big Sandy & Cumberland R. R. *Blankenship v. B. & C. R. R. Co.* 569.

Local rates established from Florida base points higher than proportionate. *Florida Fruit & Vegetable Assn. v. A. C. L. R. R. Co.* 552.

LOCALITIES.

- Acme, Tex., to East St. Louis, then to Braidwood, Ill., cement plaster, 220.
 Alturas, Cal., from Reno, Nev., apples, potatoes, and onions, 488, 490, 506.
 Amsterdam, Mo., to Memphis, Tenn., hay, 468.
 Argenta, Ark., preference in elevator allowances, 158.
 Arizona from Seattle and Olympia, Wash., beer, 178.
 Astoria, Oreg., from Washington, Oregon, and Idaho, grain, 406.
 Atlanta, Ga., from Boston, Mass., boots and shoes, 430.
 Atlantic coast to Pacific coast oil, 594.
 Atlantic coast territory to Saginaw Valley, Mich., percentage rates, 128.
 Atlantic coast points to San Francisco, beer, 503.
 Aurora, Ill., to San Francisco, persulphate of iron, 297.
 Baker City, Oreg., to Tacoma, Wash., cattle, 125.
 Baltimore, Md., from Charleston, S. C., asparagus, 423.
 Baltimore from Florida base points, vegetables, 552.
 Baltimore, Md., from Georges Creek Basin, coal, 149.
 Baltimore, Md., to Pittsburg, Pa., barrel grapes, 283.
 Bartlett, Tex., to Winchester, Kans., and Onaga, Kans., cotton-seed cake, 295.
 Baton Rouge, La., from Cedar Bluff, Ky., crushed stone, 300.
 Bay City, Mich., to Williamson's siding, Norfolk, Va., ashes, 27.
 Beaudette, Minn., to North and South Dakota, fence posts and poles, 276.
 Beckville, Tex., to points in Oklahoma, lumber, 379.
 Benton, Nebr., from Hines, Minn., cedar posts, 209.
 Big Four Mine, Colo., to Hutchinson, Kans., coal, 286.
 Bismarck, N. Dak., from Pacific coast terminals, hemp, 580.
 Black Rock, Ark., to San Francisco, hardwood lumber, 416.
 Blairstown, Iowa, from Hagerstown, Md., automobiles, 400.
 Boise, Idaho, from New York, express rates, 115.
 Bonanza, Ark., to Fostoria, Tex., coal, 385.
 Boston, Mass., to Atlanta, Ga., boots and shoes, 430.
 Boston, Mass., from Charleston, S. C., asparagus, 423.
 Boston, Mass., to Des Moines, Iowa, boots and shoes, 56.
 Boston, Mass., from Florida base points, vegetables, 552.
 Boston, Mass., to Lewiston, Me., brick, 273.
 Braidwood, Ill., from Acme, Tex., cement plaster, 220.
 Brighton, Ohio, to San Francisco, furniture, 72.
 Brooklyn, N. Y., from Pocono Mountains, Pa., ice, 447.
 Buffalo, N. Y., to points on D. & H. Co. north of Whitehall, N. Y., soap and washing powders, 167.
 Buffalo, N. Y., to San Francisco, Cal., wood mantels, 218.
 Buffalo, N. Y., to Tulsa, Okla., sulphuric acid, 184.
 Butte, Mont., from Ellsworth, Kans., eggs, 182.
 Cairo, Ill., rebilling privilege on lumber, 60.
 California from Seattle and Olympia, Wash., beer, 178.
 California points to Tacoma, Wash., sheep, 6.
 Caney, Kans., to Minneapolis, Minn., liquid asphaltum, 166.
 Caro, Tex., to Memphis, Tenn., lumber, 290.
 Carolina territory to Pacific coast terminals, furniture, 72.
 Carthage, N. C., from Wilkes-Barre, Pa., iron wagon axles, 380.
 Cataasqua, Pa., industrial switching, 514.
 Cattaraugus, N. Y., from Janesville, Wis., sugar-beet pulp, 443.
 Cedar Bluff, Ky., to Baton Rouge, La., crushed stone, 300.
 C. F. A. territory to Trunk Line territory, brick, 197.

LOCALITIES—Continued.

- Chambersburg, Pa., to Warwick, N. Y., horses, 307.
 Charleston, S. C., to Atlantic coast ports, asparagus, 423.
 Chicago, unloading of produce and other package freight, 596.
 Chicago to Des Moines, Iowa, class rates, 57.
 Chicago to El Paso, Tex., furniture, 322.
 Chicago from Frontenac, Kans., empty beer kegs, 329.
 Chicago to Green Bay, Shullsburg, and Platteville, Wis., gunpowder, 165.
 Chicago from Iowa points, cattle, hogs, and sheep, 533.
 Chicago from Memphis, cotton-seed oil, 313.
 Chicago to Omaha, mill cinders, 11.
 Chicago to Ottumwa, Iowa, class rates, 413.
 Chicago to Portales, N. Mex., coal, 139.
 Chicago to San Francisco, furniture, 72.
 Chicago, unloading of fruit and vegetables, 186.
 Chickasha, Okla., from Lawton, Okla., cotton, 12.
 Cincinnati from Memphis, cotton-seed oil, 313.
 Cincinnati to Morehead, Ky., corn, 335.
 Cottonwood, S. Dak., from Strong, Colo., coal, 540.
 Council Bluffs, Iowa, to and from Omaha, Nebr., passenger fares, 239.
 Council Bluffs, through Henderson, Ky., to southeastern points, grain, 573.
 Dalton territory to Pacific coast terminals, furniture, 72.
 Davenport, Iowa, from Terre Haute, Ind., mussel shells, 193.
 Decatur, Ill., from Eaton, Colo., sugar, 13.
 Decatur, Ill., to San Francisco, furniture, 72.
 De Kalb, Ill., to El Paso, Tex., rebilled to Las Cruces, N. Mex., wire and products, 354.
 Denver from Missouri River, on agricultural implements from Wallingford, Vt. 542.
 Deridder, La., to Fort Smith, Ark., lumber, 86.
 Des Moines, Iowa, from Boston, Mass., boots and shoes, 56.
 Des Moines, Iowa, from Chicago, class rates, 57.
 Des Moines, Iowa, from points east of Illinois, class rates, 54.
 Duluth, Minn., to St. Paul and Minneapolis, Minn., coal, 95.
 Eagle Bridge, N. Y., from Poultney, Vt., milk, 15.
 East St. Louis, Ill., from Acme, Tex., then to Braidwood, Ill., cement plaster, 220.
 East St. Louis, Ill., from Welner and St. Francis, Ark., walnut logs, 582.
 Eastern points to Pacific coast cities, furniture, 223.
 Easton, Pa., to Lake View, N. J., locomotive, 290.
 Eaton, Colo., to Decatur, Ill., sugar, 13.
 Elk Garden region to tide water, destined beyond the Capes, coal, 149.
 Ellisville, Miss., to Greenville, Pa., lumber, 22.
 Ellsworth, Kans., to Butte, Mont., eggs, 182.
 Elkhart, Ind., to Tacoma, Wash., gocarats, 394.
 El Paso, Tex., switching charges, 491.
 El Paso, Tex., from Chicago, furniture, 322.
 El Paso, Tex., to Las Cruces, N. Mex., wire products, 354.
 Flint, Mich., from Atlantic seaboard, percentage rates, 128.
 Florida points to Ohio River and north, fruits and vegetables, 552.
 Fort Smith, Ark., from Deridder, La., lumber, 86.
 Fostoria, Tex., from Bonanza and Huntington, Ark., coal, 385.
 Fostoria, Tex., to Gary, Ind., lumber, 292.

LOCALITIES—Continued.

- Frontenac, Kans., to Chicago, empty beer kegs, 329.
 Galveston, Tex., to Nogales, Ariz., destined to Magdalena, Mex., cement, 267.
 Gary, Ind., from Fostoria, Tex., lumber, 292.
 Georges Creek Basin to Baltimore, Md., coal, 149.
 Georges Creek Basin, Md., to tide water, destined beyond the Capes, coal, 149.
 Georges Creek Basin to Washington, D. C., coal, 149.
 Glenns Ferry, Idaho, to Tacoma, Wash., cattle, 324.
 Globe, Ariz., from points in various States, coke, 309.
 Gobles, Mich., to Janesville, Wis., buckwheat, 587.
 Grand Haven, Mich., to San Francisco, brass furniture trimmings and knobs, 471, 585.
 Grande Mere, Quebec, to San Francisco, newspaper, 304.
 Grand Rapids, Mich., to various points, wall plaster, 30.
 Green Bay, Wis., from Chicago, gunpowder, 165.
 Green Bay, Wis., to Leola and Wetonka, S. Dak., coal, 373.
 Greenville, Pa., from Ellisville, Miss., lumber, 22.
 Hagerstown, Md., to Marinette, Wis., and Blairstown, Iowa, automobiles, 400.
 Henderson, Ky., from Omaha and Council Bluffs through to southeastern points, 573.
 Hines, Minn., to Beton, Nebr., and Windsor, Mo., cedar posts, 209.
 Hinton, W. Va., from east Virginia points, potatoes, 578.
 Holdup, La., from Marshall, Tex., car wheels and axles, 333.
 Hopkins, Minn., to points in States west and south, threshing machines and agricultural implements, 189.
 Horatio, Ark., to Memphis, Tenn., peaches, 90.
 Horicon Junction, Wis., to Minnesota Transfer, Minn., agricultural implements, 195.
 Huntington, Ark., to Fostoria, Tex., coal, 385.
 Hutchinson, Kans., from Big Four Mine, Colo., coal, 286.
 Hutchinson, Kans., to Lake Charles, La., flour, 1.
 Iowa points to Chicago, cattle, hogs, and sheep, 533.
 Jackson, Tenn., to New England points, cotton, 418.
 Janesville, Wis., to Cattaraugus, N. Y., and Windber, Pa., sugar-beet pulp, 443.
 Janesville, Wis., from Gobles, Mich., buckwheat 587.
 Janesville, Wis., from New York city, clothing, 508.
 Janesville, Wis., to Pennsylvania and New York points, sugar-beet pulp, 548.
 Kansas to Muskogee, Okla., salt, 169.
 Kansas City, Mo., to Milwaukee, Wis., empty beer packages, 359.
 Keene, N. Y., demurrage on coal, 392.
 Kenosha, Wis., to Los Angeles, Cal., furniture, 72.
 Kentucky to Mexico, leaf tobacco, 588.
 Lake Charles, La., from Turon, Kans., flour, 1.
 Lake View, N. J., from Easton, Pa., locomotive, 280.
 Las Cruces, N. Mex., from El Paso, Tex., wire products, 354.
 Lawton, Okla., to Chickasha, Okla., cotton, 12.
 Leadville, Colo., from St. Louis via Pueblo, Colo., beer, 225.
 Leola, S. Dak., from Green Bay, Wis., coal, 373.
 Lewiston Me., from Boston, Mass., brick, 273.
 Little Rock, Ark., preference in elevator allowances and facilities, 158.
 Los Angeles, Cal., from eastern points, furniture, 72.
 Los Angeles, Cal., to eastern points, refrigerator charges, 404.
 Los Angeles, Cal., from Kenosha, Wis., furniture, 72.

LOCALITIES—Continued.

- Los Angeles, Cal., to Yuma, Ariz., ice, 461.
 Louisville, Ky., misdelivery of cheese, 175.
 Louisville, Ky., from Memphis, Tenn., cotton-seed oil, 313.
 Magdalena, Mex., from Galveston, Tex., cement, 267.
 Marinette, Wis., from Hagerstown, Md., automobiles, 400.
 Marshall, Tex., to Holdup, La., car wheels and axles, 333.
 Melrose Station, N. Y., demurrage, 457.
 Memphis, Tenn., from Caro, Tex., lumber, 290.
 Memphis, Tenn., from Horatio, Ark., peaches, 90.
 Memphis, Tenn., compression of cotton, 98.
 Memphis, Tenn., reshipping privilege on lumber, 60.
 Memphis, Tenn., to Chicago, Cincinnati, and Louisville, cotton-seed oil, 313.
 Memphis, Tenn., from Merwin and Amsterdam, Mo., hay, 468.
 Merwin, Mo., to Memphis, Tenn., hay, 468.
 Mexico from Kentucky and Tennessee leaf tobacco, 588.
 Mill Creek-Elk, W. Va., to points in various States, cannel coal, 306.
 Milwaukee, Wis., from Omaha, Nebr., and Kansas City, Mo., empty beer packages, 350.
 Milwaukee, Wis., from Port Costa, Cal., barley, 576.
 Minneapolis, unloading of fruit and vegetables, 506.
 Minneapolis, Minn., from Caney, Kana., liquid asphaltum, 166.
 Minneapolis, Minn., from Duluth, Minn., and Superior, Wis., coal, 95.
 Minneapolis to South Dakota, illuminating oils and gasoline, 146.
 Minnesota transfer, Minn., from Horicon Junc., Wis., agricultural implements, 195.
 Missouri River to Denver, agricultural implements from Wallingford, Vt., 542.
 Mobile, Ala., from New Orleans, class rates, 231.
 Montchanin, Del., to Pennsylvania and Ohio Points, black powder, 544.
 Montgomery, Ala., from New Orleans, class rates, 231.
 Montgomery, Ala., from Ohio and Mississippi River crossings, class and commodity rates, 521.
 Morehead, Ky., from Cincinnati, Ohio, corn, 335.
 Moundsville District, coal, to Washington, Pa., 473.
 Mountain Home, Idaho, to Tacoma, Wash., cattle, 324.
 Mountain Lake Park, Md., train stops, 396.
 Muskogee, Okla., from Kansas fields, salt, 169.
 Mystic Wharf, Boston, Mass., to Lewiston, Me., brick, 273.
 Nevada from Seattle and Olympia, Wash., beer, 178.
 New England points from Georges Creek Basin, Md., coal, 149.
 New England points from Jackson, Tenn., cotton, 418.
 New Orleans, free time on forest products, 496.
 New Orleans to Mobile, Ala., and Pensacola, Fla., class rates, 231.
 New Orleans to Montgomery, Prattville, and Selma, Ala., class rates, 231.
 New York to Boise, Idaho, express rates, 115.
 New York from Charleston, S. C., asparagus, 423.
 New York to Janesville, Wis., clothing, 506.
 New York to Pittsburg, Pa., grapes, 283.
 New York to San Francisco, brass-covered iron tubing, 475.
 New York, track storage charges on oats, 123.
 New York, free lighterage of sugar, 40.
 New York, lighterage of roofing material and coal tar, 464.
 Nogales, Ariz., from Galveston, Tex., destined to Magdalena, Mex., cement, 267.

LOCALITIES—Continued.

- Norfolk, Va., from Bay City, Mich., ashes, 27.
 North Dakota from Beaudette and Warroad, Minn., fence posts and poles, 276.
 Ogden, Utah, from various interstate points, excursion rates, 212.
 Oklahoma from Beckville, Tex., lumber, 379.
 Olympia, Wash., to California, beer, 178.
 Omaha from Chicago, mill cinders, 11.
 Omaha to Council Bluffs, Iowa, passenger fares, 238.
 Omaha to and from Milwaukee, Wis., empty beer packages, 359.
 Omaha through Henderson, Ky., to southeastern points, grain, 573.
 Onaga, Kans., from Bartlett, Tex., cotton-seed cake, 295.
 Ottumwa, Iowa, from Chicago and points east of Indiana-Illinois state line, class rates, 413.
 Pacific coast from Atlantic coast, oil, 594.
 Pacific coast to Bismarck, N. Dak., hemp, 580.
 Pacific coast from eastern points, furniture, 223.
 Pacific coast from points east of Mississippi River, hardwood lumber, 288.
 Pacific coast from eastern points, furniture, 72.
 Pacific coast terminals from Mississippi River, hardwood lumber, 251.
 Pennsylvania points to Point Pleasant, N. J., coal, 383.
 Pensacola, Fla., from New Orleans, class rates, 231.
 Pewee Valley, Ky., to Pittsburg, Pa., grapes, 302.
 Philadelphia, Pa., from Charleston, S. C., asparagus, 423.
 Philadelphia, Pa., from Florida base points, vegetables, 552.
 Philadelphia, Pa., to Pittsburg, Pa., grapes, 283.
 Pittsburg, Kans., to Portales, N. Mex., coal, 139.
 Pittsburg, Pa., delay of fruit, 361.
 Pittsburg, Pa., from Pewee Valley, Ky., grapes, 302.
 Pittsburg, Pa., from seaboard points, grapes, 283.
 Platteville, Wis., from Chicago, gunpowder, 165.
 Point Pleasant, N. J., coal from Pennsylvania fields, 383.
 Portales, N. Mex., from Chicago and Pittsburg, Kans., blacksmith coal, 139.
 Port Costa, Cal., to Milwaukee, Wis., barley, 576.
 Poultney, Vt., to Eagle Bridge, N. Y., milk, 15.
 Prattville, Ala., from New Orleans, class rates, 281.
 Pueblo, Colo., to Leadville, Colo., beer from St. Louis, 225.
 Puget Sound points to California, Nevada, and Arizona, beer, 178.
 Quinn, S. Dak., from Strong, Colo., coal, 540.
 Reno Nev., to Alturas, Cal., potatoes, onions, and apples, 488, 490, 506.
 Rome, N. Y., to San Francisco, brass furniture trimmings and knobs, 471, 585.
 Roycefield, N. J., station facilities, 375.
 St. Francis, Ark., to East St. Louis, Ill., walnut logs, 582.
 St. Louis to Leadville, Colo., via Pueblo, Colo., beer, 225.
 St. Paul, Minn., from Duluth, Minn., and Superior, Wis., coal, 95.
 St. Paul to South Dakota, illuminating oils and gasoline, 146.
 Saginaw, Mich., from Atlantic seaboard, percentage rates, 128.
 San Francisco from Atlantic coast points, beer, 503.
 San Francisco from Aurora, Ill., persulphate of iron, 297.
 San Francisco from Black Rock, Ark., hardwood lumber, 416.
 San Francisco from Brighton, Ohio, furniture, 72.
 San Francisco from Buffalo, N. Y., wood mantels, 218.
 San Francisco from Chicago, furniture, 72.
 San Francisco from Decatur, Ill., furniture, 72.

LOCALITIES—Continued.

- San Francisco from eastern points, furniture, 72.
 San Francisco from Grand Haven, Mich., Waterbury, Conn., and Rome, N. Y., brass furniture trimmings and knobs, 471, 585.
 San Francisco from Grand Mere, Quebec, newspaper, 304.
 San Francisco from west of Mississippi River, hardwood lumber, 251.
 San Francisco from New York City and neighboring points, brass-covered iron tubing, 475.
 San Francisco from Yonkers, N. Y., elevator guides, 3.
 St. Paul, unloading of fruit and vegetables, 596.
 Seattle, Wash., to California, Nevada, and Arizona, beer, 178.
 Seaboard points to Pittsburg, Pa., Malaga grapes, 283.
 Selma, Ala., from New Orleans, class rates, 231.
 Shullsburg, Wis., from Chicago, gunpowder, 165.
 South Dakota from Beaudette and Warroad, Minn., fence posts and poles, 276.
 South Dakota from Minneapolis and St. Paul, illuminating oils and gasoline, 146.
 South Memphis, compression of cotton, 98.
 Strong, Colo., to Quinn and Cottonwood, S. Dak., coal, 540.
 Superior, Wis., to St. Paul and Minneapolis, Minn., coal, 95.
 Tacoma, Wash., from Baker City, Oreg., cattle, 125.
 Tacoma, Wash., from California points, sheep, 6.
 Tacoma, Wash., from Elkhart, Ind., gocarts, 394.
 Tacoma, Wash., from Glens Ferry and Mountain Home, Idaho, cattle, 324.
 Tennessee to Mexico, leaf tobacco, 588.
 Terre Haute, Ind., to Davenport, Iowa, mussel shells, 193.
 Trunk Line territory from C. F. A. territory, brick, 197.
 Tulsa, Okla., from Buffalo, N. Y., sulphuric acid, 184.
 Turon, Kans., to Lake Charles, La., flour, 1.
 Virginia points to Hinton, W. Va., potatoes, 578.
 Wallingford, Vt., to Denver, agricultural implements, 542.
 Walsenburg coal district, Colo., to Texas and New Mexico points, 479.
 Warroad, Minn., to North and South Dakota, fence posts and poles, 276.
 Warwick, N. Y., from Chambersburg, Pa., horses, 307.
 Washington, Oregon, and Idaho to Astoria, Oreg., grain and produce, 406.
 Washington, D. C., from Charleston, S. C., asparagus, 423.
 Washington, D. C., from Florida base points, vegetables, 552.
 Washington, D. C., from Georges Creek basin, coal, 149.
 Washington, D. C., to Pittsburg, Pa., barrel grapes, 283.
 Washington, Pa., from Moundsville district, coal, 473.
 Waterbury, Conn., to San Francisco, brass furniture trimmings and knobs, 471, 585.
 Welner, Ark., to East St. Louis, Ill., walnut logs, 582.
 Western classification, coffeepot percolators, 511.
 Wetonka, S. Dak., from Green Bay, Wis., coal, 373.
 Wilkes-Barre, Pa., to Carthage, N. C., iron wagon axles, 330.
 Williamson's siding, Norfolk, Va., from Bay City, Mich., ashes, 27.
 Winchester, Kans., from Bartlett, Tex., cotton-seed cake, 295.
 Windber, Pa., from Janesville, Wis., sugar-beet pulp, 443.
 Windsor, Mo., from Hines, Minn., cedar posts, 209.
 Yonkers, N. Y., demurrage, 457.
 Yonkers, N. Y., lighterage of sugar, 40.
 Yonkers, N. Y., to San Francisco, Cal., elevator guides, 3.
 Yuma, Ariz., from Los Angeles, Cal., ice, 461.

LOCATION.

Proximity of Detroit and Toledo to the great channels of through transportation and their location on direct through routes where density of traffic is very great and general operating and traffic conditions are favorable, are elements that can not be ignored by the rate maker and must necessarily tend to lower rates than can be accorded to communities that are removed from these great streams of traffic. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128.

Montchannin, Del., in "Philadelphia rate basis" territory should be accorded same rates as other points in that territory. *Du Pont de Nemours Powder Co. v. P. R. R. Co.* 544.

Geographical disadvantages can not well be overcome by any proper adjustment of transportation charges. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (33).

Improper for Commission to equalize disadvantages of location and other conditions. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128 (137).

LONG HAUL.

If one carrier voluntarily gives very low rate per ton per mile over a long and circuitous route in order to handle traffic entirely over its own lines, this is no standard of reasonableness of rate on other traffic which passes over two or more separately owned lines of railroad. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (485).

Length of haul and other transportation factors have a more or less definite relation to the rate that carrier may reasonably demand for a transportation service. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

Carriers are ordinarily entitled to charge a slightly higher per mile rate for shorter hauls than are proper to be charged for longer distances. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (207).

LONG AND SHORT HAUL.

Joint through rate from longer distance point (South Easton, Pa.) lower than rate from intermediate point (Easton, Pa.). It would perhaps be difficult for defendants to justify participating with the L. V. in the higher rate from which the L. V. gets no division. Unless unusual conditions warrant this adjustment it should be corrected at once. *Males Co. v. L. & H. R. Ry. Co.* 280 (282).

Rate of 32½ cents per 100 pounds on c. l. shipments of potatoes from east Virginia points to Hinton, W. Va., found unjust and discriminatory in view of rate of 26 cents on shipments from same points through Hinton to Charleston, W. Va., 97 miles beyond, and to Huntington, W. Va., 147 miles beyond. *Hinton Fruit & Produce Co. v. C. & O. Ry. Co.* 578.

Under section 4 of the act the burden rests upon a carrier to justify a rate from an intermediate point that is higher than rate from a more distant point when the shipment moves over the same rails and in the same direction. *Carstens Packing Co. v. O. S. L. R. R. Co.* 324 (326).

Rates from and through Ohio and Mississippi River crossings to Montgomery, Ala., may properly be higher than to Mobile, Ala., and Pensacola, Fla., but not by more than the locals back. *Montgomery Freight Bureau v. L. & N. R. R. Co.* 521.

Claim that fourth section of act was violated in these shipments not sustained, as short line made the rate to the competitive point and defendants had to meet that condition. *Foster Lumber Co. v. G., C. & S. F. Ry. Co.* 385.

While George's Creek mines are on lateral roads they must be regarded as intermediate for all practical rate-making purposes. Violation found. *American Coal Co. v. B. & O. R. R. Co.* 149 (156).

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

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As the Commission has no jurisdiction over the issue of disposition of any land, it has advised all the title of allotments of these parcels and over the same. The parcels of the allotment are already well corrected in order that the title of the allotment should be registered. When Parcel A is registered, it will be in the name of the Commission.

It is the purpose of this document to report on the results of the study of the effects of the use of the word "environment" in the title of a document on the perception of the document by the reader. The study was conducted by the National Library of Medicine, Bethesda, Maryland, and the results are presented in this document.

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MAINTENANCE OF RELIGIOUS FREEDOM

The matter of adjusting rates primarily is most conditions that will arise after the reduction herein referred to made rests primarily with the de-

East River, Manning Co. v. M. P. Ry. Co. 225 (229).

DISCUSSION

reduction in price of pineapples from Florida would be of much
a benefit to these growers as long as there was a corresponding
price rise. It is of vital importance to them that the relation

MARKET COMPETITION—Continued.

between these two fields of production should be fairly adjusted, and this should be kept in mind by the carriers and this Commission. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (561).

Competition that may be considered in proper cases not only includes competition of carriers, but also that of the commodity produced in another section and sometimes competition of one kind of traffic with another kind. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (203).

It is the duty of railroads to establish reasonable transportation charges, and in so doing competitive conditions must be considered, but it is not their duty to make good to the producer the result of his own folly or misfortune. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (561).

Market competition at one point and absence of competitive relationship between the two localities in respect of the commodity complained of, held to justify a discrimination. *Southern Bitulthic Co. v. I. C. R. R. Co.* 300.

Commission can not compel rail carriers from Florida to markets for pineapples to reduce their rates to meet the lower and cheaper water charges from Cuba. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (562).

Kansas salt comes into keen competition with Michigan salt, and when the rates are the same the latter is preferred. *Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co.* 169 (171).

MARKING PACKAGES.

It is the undoubted right of a carrier to decline to receive for transportation any merchandise not plainly marked. But a rule that increases the rate for the carriage of merchandise not marked plainly and indelibly is of doubtful validity. *Ellsworth Produce Co. v. U. P. R. R. Co.* 182 (183).

MAXIMUM RULES.

Special Circular No. 6 construed. *Carstens Packing Co. v. O. S. L. R. R. Co.* 324 (326).

MEASURE RATE.

Per-ton-per-mile comparisons are often helpful in reaching a conclusion in respect to the reasonableness of rates, but to take that as the sole test would be a scrutiny from the narrowest view point which would deny consideration to many other potent and frequently controlling forces which must be given due weight in a proper determination. *Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co.* 169 (173).

A rule that increases the rate for the carriage of merchandise not marked plainly and indelibly is of doubtful validity. *Ellsworth Produce Co. v. U. P. R. R. Co.* 182 (183).

Evidence that reduction of rate on particular commodity would not seriously impair defendant's revenues, standing alone, has little value and forms no basis upon which to determine that rates are unreasonable. *Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co.* 180 (192).

Reasonableness of rate must depend upon conditions at time traffic moved. And these factors are in their nature neither permanent nor fixed, but change with the general economic panorama. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

While the amount shipped by a concern has little or no bearing on the question of the reasonableness of rates, it is of some significance where the shipments reach substantial proportions. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

MEASURE RATE—Continued.

Distance is an important, but not necessarily a controlling, factor in rate questions. Whether or not it is conclusive depends upon the facts in the case. *Missouri Pacific Bureau v. A. T. & S. F. Ry. Co.* 169 (172).

Divisions of through rate which carrier accepts as its proportion not measure of reasonableness of its separately established rates. *Manahan v. N. P. Ry. Co.* 36-37. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

Classification is sometimes made with respect to the manner of packing of articles. *Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co.* 197 (201).

MEXICO.

Commission no authority to establish rate in Mexico, nor to order maintenance of figure rate from United States to points in Mexico, but it may require American carriers to discontinue applying joint through rate, and, where such rate has been voluntarily maintained, may inquire into its reasonableness and award damages. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 388.

In absence of joint through rate, lowest combination should be applied on shipments into Mexico. *Audrey & Semple v. G. H. & S. A. Ry. Co.* 267.

Minimum weights on leaf tobacco in bagsheads from Kentucky and Tennessee to Mexico found excessive. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

MILEAGE TICKETS.

Mileage tickets, if published for sale, must be open impartially to the public availing themselves of the conditions of the ticket. *Weber Club & Inter-mountain Fair Assn. v. O. S. L. R. R. Co.* 212 (216).

MILLING-IN-TRANSIT.

Whenever by any transit arrangement through rates are applied, such through rates must be as of date of first movement from point of origin under such through rates. *See* *Milling-in-Transit Rates*, 113.

Through rate on finished product applicable from origin to destination. *Monarch Milling Co. v. C. R. I. & P. Ry. Co.* 1.

MINIMUM.

30-foot car furnished, with minimum of 16,000 pounds; actual weight of shipment was 14,500 pounds, and charges were based on 16,000-pound minimum; car was not loaded to full capacity and 40-foot car could have held shipment. As applied to this shipment, 14,000 pounds would have been a reasonable minimum. *Peerless Agencies Co. v. A., T. & S. F. Ry. Co.* 218.

A carload minimum for light and bulky articles like furniture should be such that the minimum can ordinarily be loaded, but the minimum is not necessarily unreasonable because it occasionally happens that cars, although loaded to their full physical capacity, will not contain it. *Montague & Co. v. A., T. & S. F. Ry. Co.* 72.

Tariffs in effect at time of movement provided minimum of 24,000 pounds, while complaint alleges such minimum to have been 30,000 pounds and charges were based on latter minimum. Based upon 24,000-pound minimum there has been an overcharge, for which reparation will be awarded. *James & Abbot Co. v. B. & M. R. R.* 273.

It is in interest of economical transportation that cars containing light and bulky articles should be loaded as heavily as possible, and it is equally plain that carrier can afford, to an extent, to decrease its rates in proportion as the loading increases. *Montague & Co. v. A., T. & S. F. Ry. Co.* 75).

MINIMUM—Continued.

Minimum carload weights for transportation of furniture from various eastern points to certain Pacific coast cities involved in these proceedings, established by the sliding scale for cars of the length used, were reasonable. *Pease Bros. Furniture Co. v. S. P., L. A. & S. L. R. R. Co.* 223.

It is not practical to establish a minimum for each kind of furniture; nor could such minimums if established be made available, since the consignee frequently, and perhaps usually, desires to put different sorts of furniture into the same car. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72 (74).

Carrier having for its own convenience furnished shipper with two smaller cars instead of one of capacity ordered; *Held*, that it was unreasonable to charge on basis of combined minima of two cars furnished. *Springer v. E. P. & S. W. R. R. Co.* 322.

There should be a relation between the minimum and the physical capacity of the car, which means that the minimum might properly increase as the size of the car increases. *Pease Bros. Furniture Co. v. S. P., L. A. & S. L. R. R. Co.* 223 (224).

Combination rate, Wallingford, Vt., to Denver, applied. Minimum from Missouri River found unreasonable, ordered reduced, and reparation awarded on basis of actual weight from the river. *Tritch Hardware Co. v. Rutland R. R. Co.* 542.

There is a connection between the minimum and the rate. If minimum is reduced, rate may be properly advanced, and if minimum is increased, rate should be reduced. *Montague & Co. v. A., T. & S. F. Ry. Co.* 72 (75).

Advance in rate accompanied by increase in minimum, and subsequent reduction of rate but no change in minimum, no basis for reparation. *Liebold Co. v. D., L. & W. R. R. Co.* 503.

Ambiguous and indefinite tariffs, susceptible of and resulting in conflicting interpretations, criticised. *Old Dominion Copper & Smelting Co. v. P. R. R. Co.* 300.

Not unreasonable to require assessment of refrigeration charges on l. c. l. shipments at minimum carload charges. *Asparagus Growers' Asso. v. A. C. L. R. R. Co.* 423.

Minimum weights on leaf tobacco in hogsheads from Kentucky and Tennessee to Mexico found excessive. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

A tariff is not unlawful *per se* because it fails to state different minimums for cars of different sizes. *Montague & Co. v. A., T. & S. F. Ry. Co.* 72 (76).

Not possible to fairly adjust rate without proper adjustment of minimum. *Montague & Co. v. A., T. & S. F. Ry. Co.* 72 (75).

MINING.

Increased cost of operating big-vein coal mine. *American Coal Co. v. B. & O. R. R. Co.* 140 (153).

MISBILLING. See FALSE BILLING.**MISROUTING.**

Initial line having two routes to junction point, on shipments moving over direct route to junction point, local rate applied to junction plus through rate beyond, though combination via other route to same junction made lower. *Held*, misrouting. *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 443; *Amos Rehberg & Co. v. E. R. R. Co.* 506; *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 548.

MISROUTING—Continued.

Question whether routing instructions inserted in bill of lading by railroad agent without any directions by consignee are binding as against shipper, and whether initial carrier is thereby relieved from obligation to forward over another route cheaper than that mentioned in bill of lading, presented in pleadings, but not decided. *James v. E. C. S. Ry. Co.* 468 (469).

The Commission intervenes in misrouting cases only when, as the result of the failure to obey the shipper's routing instructions, or as a result, without such instructions, of moving a shipment over a route carrying a higher rate than the rate in effect over another route reasonably available, additional transportation charges accrue. *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 443.

Shipper in following routing instruction in tariff sent shipment via route over which only class rate applicable. Tariff being in error, carrier's duty was to treat shipments as unrouted and to forward via junction making lowest combination. *Saner-Whiteman Lumber Co. v. T. & N. O. R. R. Co.* 296.

Where a shipper gives instructions to forward his goods by a particular route carrier is relieved of duty of ascertaining whether the goods could be forwarded by another route at a lower rate. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 292 (294).

In absence of specific through routing by shipper, it is duty of carrier to route shipments by cheapest reasonable route over which lawfully established rates are in force. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 292 (294).

Carriers may not disregard instructions of shippers as to intermediate routing, except when tariff of initial line reserves the right to dictate intermediate routing. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 292 (294).

Where there are two available routes over the lines of the same carrier, the lowest rate via either route must be applied though the traffic moves via the other route. *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 443.

Shipper directed routing resulting in higher charge; no evidence of unreasonableness of rate charged. Complaint dismissed. *South Canon Coal Co. v. C. & S. Ry. Co.* 286.

Carrier selling locomotive and giving routing instructions acts as agent for consignee, and not as carrier. No misrouting. *Males Co. v. L. & H. R. Ry. Co.* 290.

Shipment diverted on account of washout; reparation awarded down to basis of rate via billed route. *Carstens Packing Co. v. O. R. R. & N. Co.* 125.

Defendants received shipment without routing instructions and ought to have forwarded it over cheapest route. *Germain Co. v. N. O. & N. E. R. R. Co.* 22 (25).

MIXED CARLOADS.

Whenever shipper can combine a carload of vegetables and fruits there is no hardship in requiring carrier to handle this combined carload at a carload rate, applicable to the highest-rated article in the car. This must not be taken as a conclusion applicable to all other commodities. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (567).

It is not practical to establish a minimum for each kind of furniture; nor could such minimums if established be made available, since the consignee frequently, and perhaps usually, desires to put different sorts of furniture in the same car. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72 (74).

or controllers were parts of hoisting machines with which they were packed and under the classification could have been shipped in mixed cars at the rate applicable to hoisting machines. *Otis Elevator Co. v. L. C. & H. R. R. R. Co.* 8.

MIXED CARLOADS—Continued.

Potatoes and onions, Reno, Nev., to Alturas, Cal. *Lauer & Son v. Nevada-California-Oregon Ry.* 488; *Bunch & Tussey v. Same*, 490, 506.

"NET TON."

Erroneous insertion in tariff, changed to "gross ton of 2,240 pounds." Reparation awarded on shipments made. *American Trust & Savings Bank v. C. M. & St. P. Ry. Co.* 11.

NOTICE OF ARRIVAL.

Demurrage charges on coal held to have been unlawfully assessed, under the tariff, for the reason that defendant failed to notify consignee of arrival of cars. *Rossie Iron Ore Co. v. N. Y. C. & H. R. R. Co.* 392.

OGLESBY COMMITTEE.

Result of conference. *Kiser Co. v. C. of G. Ry. Co.* 430 (435).

ORIGIN.

Rate on beer from Pueblo, Colo., to Leadville, Colo., originating at St. Louis, Mo., and forwarded from Pueblo without intervention of shipper, found unreasonable and reduced. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225. Proportional rate out of El Paso, Tex., limited to traffic over one line which moved in over that line only, unlawful. *Bascom v. A. T. & S. F. Ry. Co.* 354.

OVERCHARGE. See also WORDS AND PHRASES.

Where initial line publishes joint rate not concurred in by connecting lines, and shipper is compelled to pay a greater charge than that named in the tariff, he may recover from the initial line the difference certainly if the rate posted is found reasonable. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

A carrier that has collected an overcharge can not be excused from repayment of same because it has paid it to another carrier. *Amos Rehberg & Co. v. Erie R. R. Co.* 508.

Carriers criticised for delay in voluntarily adjusting. *Tyson & Jones Buggy Co. v. A. & A. Ry. Co.* 330.

PACKAGE FREIGHT.

No good reason why package freight, which is loaded and unloaded upon the team track or at private siding, should not be handled into and out of the car by shipper in same manner that bulk freight is. *Wholesale Fruit & Produce Asso. v. A. T. & S. F. Ry. Co.* 596.

PACKING.

Classification is sometimes made with respect to the manner of packing of articles. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (201).

PAPER RATE.

Local rate from intermediate out-of-line point only useful as a device, no such commodity being produced in that section. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (142).

PARTY.

As complainant, who is a commission merchant, was neither consignor nor consignee, and apparently did not pay the charges, order will be entered that defendant refund to such party as may be lawfully entitled to receive the same. *Jones v. K. C. S. Ry. Co.* 468 (470).

Defendants contend that complainant is not a proper party to maintain action before the Commission. The decisions of the Commission and the law itself, stand for the principle that complainant is entitled to standing under the act. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (240).

PAST RATES—Continued.

No matter how long a practice has been in effect, it may be challenged. Remedial statutes, such as the interstate commerce law, are generally enacted because of abuses of long standing. *Boise Commercial Club v. Adams Express Co.* 115 (119).

Rate on highly competitive article long maintained, advanced, and then reduced to old figures. Advanced rate not found unreasonable, and claim for reparation denied. *Pabst Brewing Co. v. C. M. & St. P. Ry. Co.* 359; *Schoenhofen Brewing Co. v. A. T. & S. F. Ry. Co.* 329.

It is plainly undesirable to disturb a method of rate making long established and generally satisfactory without convincing proof of its injustice. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (35).

Existence of lower rate in the past of strong evidentiary value, but raises no presumption of law that a newly established higher rate is unreasonable. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

The long-continued maintenance of a lower rate raises no presumption of law that a newly established higher rate is unreasonable. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

When water competition disappeared, no reason why Memphis should have continued to have the advantage of very low rates. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (320).

PERCENTAGE RATES.

While there are some inequalities resulting from the base rate scaled down to points between Chicago and New York, experience seems to show that, on the whole, the present adjustment operates without undue discrimination between different shippers and localities. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (33).

The general foundation upon which rests the whole structure of eastbound and westbound rates in the "percentage-basis" territory described and discussed. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128.

PERSONALITY OF CONSIGNEE.

No basis for difference in rates. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (142).

PETITION FOR REHEARING. See REHEARING.**PHYSICAL OPERATION.**

Extension of their (carriers') lines to New York was not in compliance with any requirement of the act. It was merely the exercise by the carriers of business discretion in a matter of physical operation, concerning which the Federal Government has not assumed to exercise authority, if any exists. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (45).

In the performance of its passenger service a carrier operates in a wide field of reasonable discretion in the adaptation of its service to the infinite variety of circumstances and conditions confronting it. Only such resulting discriminations as are undue and unreasonable are forbidden. *Loch Lynn Construction Co. v. B. & O. R. R. Co.* 396.

PLANT FACILITIES.

The service performed by the Crane R. R. Co. for the complainant 's that of a plant facility, the expense of which should be borne entirely by the complainant, and which no railroad under the guise of the absorption of a switching charge may lawfully sustain. *Crane Iron Works v. C. R. R. Co. of N. J.* 514.

PLEADINGS.

While complaint may put in issue an entire schedule of rates or rates upon a single commodity to and from all points, in same way the rates to be dealt with must be definitely stated in the complaint. The thing found fault with must definitely appear. *Florida Fruit & Vegetable Assn. v. A. C. L. R. R. Co.* 322 (322).

Question of refrigeration not presented in pleadings. When complainant upon the hearing endeavored to go into the subject, defendants objected on the ground of lack of notice and unpreparedness: *Held*, That the contention of defendants is sustained. *Florida Fruit & Vegetable Assn. v. A. C. L. R. R. Co.* 332.

General designations can not be accepted as basis for an order which to be enforceable under the law must be specific and definite either in enumerating particular points or indicating a specifically defined group or territory. *Kiser Co. v. C. & O. Ry. Co.* 420 (421).

PORT DIFFERENTIALS.

Rates on asparagus from Charleston, S. C. to Atlantic coast ports reduced from flat rate to differential basis. *Asparagus Growers Assn. v. A. C. L. R. R. Co.* 423.

POTENTIAL COMPETITION.

So long as there was actual or potential competition, Memphis could properly have an advantage, but when that competition disappeared, no reason to have continued this advantage. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (314).

Low percentages at Detroit and Toledo was the result, if not of actual water competition, at least of a very strong potential competition arising from their location on the lakes. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128 (136).

POWER OF COMMISSION.

Where transportation service has been rendered for which no tariff authority whatever exists and where shipper paid sum claimed by carrier for that service, Commission has jurisdiction to inquire what was a reasonable charge for the service and to order repayment of whatever carrier has collected over and above such reasonable charge. *Memphis Freight Bureau v. K. C. & Ry. Co.* 391.

Commission has no authority to establish rate in Mexico, nor to order maintenance of future rate from United States to point in Mexico, but it may require American carriers to discontinue applying joint through rate, and, where such rate has been voluntarily maintained, may inquire into its reasonableness and award damages. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

Commission is expressly authorized and empowered to pass upon the reasonableness of a charge for transportation or the reasonableness of any regulation or practice affecting such charge, expressed in a tariff issued by any carrier subject to the provisions of the act. *Hood & Sons v. Del. & Hud. Co.* 15 (19).

Commission has no authority to approve or enforce a private agreement made between shippers and carriers concerning charges for transportation, nor is it bound by such agreement when reasonableness of charges are challenged in the mode prescribed in the act. *Hood & Sons v. Del. & Hud. Co.* 15 (18).

Only limitation to power of Commission to establish a through route is where there is already a reasonable or satisfactory through route in existence, and that is a question of fact for determination by this Commission. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (481).

POWER OF COMMISSION—Continued.

Section 15 is the dominating and controlling expression of the real object and meaning of the act. It makes the Commission a special expert body to deal with rates and practices affecting rates, not a body to take the place of courts. *Joynes v. P. R. R. Co.* 361.

Reservation in charter by Congress of right to fix charges "by appropriate legislation" exercised by delegation of this authority to the Commission. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (246).

Proceedings in court to restrain advanced rates dismissed, as the question of reasonableness of rates was one peculiarly within cognizance of this Commission. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (314).

The act was clearly intended to prescribe the only rule as to regulation of interstate rates and it supersedes different rules in prior statutes. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (247).

Commission is not vested with powers of a court of equity to relieve from hardships resulting from improvident arrangements between the parties. *Werner Saw Mill Co. v. I. C. R. R. Co.* 388.

Commission no power to award damages for loss and damage resulting from decay of fruit arising from delay and discrimination in furnishing unloading facilities. *Joynes v. P. R. R. Co.* 361.

The Commission is a special tribunal with limited powers. *Joynes v. P. R. R. Co.* 361.

Commission no power to require increase of rate. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (102).

POWER OF CONGRESS.

Extension of their (carriers') lines to New York was not in compliance with any requirement of the act. It was merely the exercise by the carriers of business discretion in a matter of physical operation concerning which the Federal Government has not assumed to exercise authority, if any exists. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (45).

Where regulation of commerce requires a uniform rule the power of Congress is exclusive, but where it requires different rules for different localities the State may legislate, but only in absence of congressional action. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (247).

If the contention is correct that defendants are not subject to the act to regulate commerce, the reasonableness of the fares could be determined only by the common law or by Congress. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (246).

PRECEDENT.

On authority of previous case, reparation awarded complainant for exaction of unreasonable charge on a shipment of hard-wood lumber from Black Rock, Ark., to San Francisco, Cal. *White Brothers v. A., T. & S. F. Ry. Co.* 416.

Reparation awarded on certain shipments of sugar-beet pulp from Janesville, Wis., to various destinations in the states of New York and Pennsylvania on the authority of *Larrowe Milling Co. v. C. & N. W. Ry. Co.*, ante. *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 548.

Case controlled by *Larrowe Milling Co.*, ante. *Amos Rehberg & Co. v. Erie R. R. Co.* 508.

Merle Co. v. A., T. & S. F. Ry. Co., ante, followed. *Merle Co. v. N. Y., N. H. & H. R. R. Co.* 585.

PREFERENCE.

The lease to Bunch, at a nominal rental of an elevator erected by the defendants on their right of way at Argenta, Ark., operates as an unlawful

PREFERENCE—Continued.

preference in favor of Bunch and as an unjust discrimination against dealers and shippers of grain at Little Rock. *Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co.* 158.

Rates from Chicago to Des Moines alleged to give undue advantage and preference to Minneapolis and St. Paul as against Des Moines. *Held*, no unreasonable preference established. *Greater Des Moines Committee v. C., R. I. & P. Ry. Co.* 57.

No violation of the statute results from a preference, though found to exist, to a corporation engaged solely in the compression of cotton in which it has no interest. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (104).

PREPAYMENT.

There can be but one lawful rate between two points, and the law takes no cognizance whatever of the distinction made by express companies between prepaid and collect shipments. *Boise Commercial Club v. Adams Express Co.* 115 (121).

Carriers may not lawfully make a difference in rates based upon the time of payment of charges. *Boise Commercial Club v. Adams Express Co.* 115.

PREVIOUS HAUL.

It is difficult to see how earnings of from \$24 to \$48 per car for a haul of some 500 miles can be held an excessive return for the service rendered, nor is this conclusion affected by consideration of the fact that shipments in question consisted of returned empties and that carrier's chief recompense comes from outbound movement. *Pabst Brewing Co. v. C., M. & St. P. Ry. Co.* 359 (360).

Proportional rate, lower than local, from El Paso, Tex., published by the Santa Fe, applicable only to traffic which moved into El Paso over that line, unlawful. *Bascom v. A., T. & S. F. Ry. Co.* 354.

PROCEDURE.

Rates having been found to be unreasonable, complainant subsequently filed its petition for reparation, but upon its application the case was dismissed without prejudice. Upon motion for reinstatement *nunc pro tunc* it was so ordered. *Werner Saw Mill Co. v. I. C. R. R. Co.* 388.

Commission can not sanction practice that would permit revival of claims barred by the statute by subsequently attaching them to other claims presented within the prescribed period. *Werner Saw Mill Co. v. I. C. R. R. Co.* 388 (390).

Complaint dismissed on motion of complainant, complaint having been satisfied. *Mill Creek Cannel Coal Co. v. Coal & Coke Ry. Co.* 306.

PROFIT.

The position of the growers of pineapples in Florida is that such rates should be established as will permit them to market their product at a reasonable profit. No such test of the justness of a transportation charge can be admitted. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (560). Owner of freight who has paid an unreasonable rate entitled to reparation irrespective of the profits accruing from his business. *Kindelon v. S. P. Co.* 251 (254).

PROPORTIONAL RATE.

A proportional rate is nothing more or less than a separately established rate, as that phrase is used in section 6 of the amended act, applicable to through transportation. And it has not been understood that a separately established rate can be other than an open rate available to all. *Bascom Co. v. A. T. & S. F. Ry. Co.* 354 (356).

PROPORTIONAL RATE—Continued.

Combination through rates from points east of Illinois-Indiana state line to Des Moines, Iowa, are excessive, unreasonable, and unlawful by reason of the excessive proportionals applied by the Rock Island on through traffic from Rock Island, Ill., to Des Moines. *Greater Des Moines Committee v. C. R. I. & P. Ry. Co.* 54.

Local rates fixed on all classes of merchandise between points on the Big Sandy & Cumberland to be used as separately established proportional rates applicable on through business. *Blankenship v. B. S. & C. R. R. Co.* 569.

Failure to apply proportional rates on grain from Omaha and Council Bluffs through Henderson, Ky., destined to the Southeast, as applied through other Ohio River crossings resulted in discrimination. *Henderson Elevator Co. v. I. C. R. R. Co.* 573.

Proportional rates on citrus fruits and pineapples from Florida base points to specified destinations north of the Ohio River and east of the Missouri River found unreasonable and reduced. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552.

Proportional carload rates on vegetables from Florida base points to Baltimore, Philadelphia, New York, and Boston found unreasonable and ordered reduced. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552.

Proportional rate applicable from farther distant point at which competition exists not extended to intermediate point. *Crutchfield & Woolfolk v. L. & N. R. R. Co.* 302 (303).

Proportional rate, lower than local, from El Paso, Tex., published by the Santa Fe, limited to traffic which moved into El Paso at any time in the past via that line only, unlawful. *Bascom v. A. T. & S. F. Ry. Co.* 354.

Through charges found unreasonable because of excessive proportional class rates constituting a factor in the through charge. *Ottumwa Commercial Asso. v. C. B. & Q. R. R. Co.* 413.

No ground for criticism of proportional rates applicable only to through movements from a defined territory or group of points. *Bascom v. A. T. & S. F. Ry. Co.* 354 (356).

PROTECTING THE RATE.

Commission can not permit refund applicable to particular shipment for sole purpose of enabling carriers to make good a rate not in effect when shipment moved, but which they had agreed to protect. Such a practice would do away with published tariff altogether if generally applied. *Crowell & Spencer Lumber Co. v. T. & P. Ry. Co.* 333.

“RAILROAD.” See **WORDS AND PHRASES.**

RAILROAD CONSIGNEE.

Lumber consigned to consignor, sold to delivering line, refused by delivering line at junction on the ground that complainant was not known at destination. Reparation awarded to cover transfer and demurrage charges accruing on account of such refusal. *Germain Co. v. N. O. & N. E. R. R. Co.* 22.

“RAILWAY.” See **WORDS AND PHRASES.**

REASONABLE RATE. See also MEASURE OF RATE.

Where transportation service has been rendered for which no tariff authority whatever exists and where shipper paid sum claimed by carrier for that service, Commission has jurisdiction to inquire what was a reasonable charge for the service and to order repayment of whatever carrier has collected over and above such reasonable charge. *Memphis Freight Bureau v. K. C. S. Ry. Co.* 90.

REASONABLE RATE—Continued.

Agreement covering points in controversy filed and tariff issued based thereon. Upon disagreement of parties as to interpretation of tariff, *Held*: Such an agreement may be regarded and used as evidence of an admission as between the parties executing it, of strong evidentiary value, that rate agreed upon is reasonable. *Hood & Sons v. Del. & Hud. Co.* 15.

Overproduction of pineapples in Florida to an unhealthy extent. It is the duty of these railroads to establish reasonable transportation charges and in so doing competitive conditions must be considered, but it is not their duty to make good to the producer the result of his own folly or misfortune. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (561).

The position of the growers of pineapples in Florida is that such rates should be established as will permit them to market their product at a reasonable profit. No such test of the justness of a transportation charge can be admitted. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (560).

Reasonableness of any adjustment can not be ascertained with mathematical accuracy, especially where there must be considered not only individual rates and comparisons, but also conditions leading to and the history of the adjustment. *Kiser Co. v. C. of G. Ry. Co.* 430 (441).

A complainant is not deprived of his right to a reasonable rate by the fact that the defendants, through neglect of the rules of this Commission as to publication of their tariffs, had failed to establish that rate in legal form. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

RECONSIGNMENT. See also RESHIPING.

Shipment sent to interstate point, stored and subsequently part removed and forwarded to point within same state. Confining decision to exact situation before Commission. *Held*, that the right of reconsignment in transit does not carry with it the right to remove a portion of carload at reconsigning point. *Acme Cement Plaster Co. v. C. & A. R. R. Co.* 220 (222).

The privilege is a thing of value to the shipper and of expense to carrier; therefore a charge may be made, but the value and extent of that service vary, and the charge should be in proportion to the service. *Beekman Lumber Co. v. K. C. S. Ry. Co.* 86 (87).

Charge of \$5 is excessive where only name of consignee is changed. One dollar per car is a reasonable charge. *Beekman Lumber Co. v. K. C. S. Ry. Co.* 86.

Shipment between two interstate points, stored and subsequently reconsigned to point in same state. *Held*, Second shipment was not interstate commerce. *Acme Cement Plaster Co. v. C. & A. R. R. Co.* 220.

Reconsignment is a privilege, not a right to be demanded, and can only be corrected where necessary to correct unjust discrimination. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (487).

Shipment billed locally, new bills issued and forwarded to another destination. *Held*, Application of joint through rate from origin to ultimate destination denied. *Clements Horst Co. v. S. P. Co.* 576.

RECORD.

Under a stipulation entered into by and between the parties, the testimony taken in another case was read in evidence and the case was submitted without any additional testimony whatever. *Bartles Oil Co. v. C. M. & St. P. Ry. Co.* 146 (147).

REDUCED RATES.

Section 22 gives carriers right to transport traffic for the use of United States, state, or municipal governments at reduced rates if they see fit to do so. Commission has no power under the law to require reduced rates for the above authorities. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (204).

REDUCTION OF RATE.

A carrier voluntarily establishing a through rate less than the sum of the locals after shipment has moved does not, *ipso facto*, become liable for the difference between the amount charged and the amount which would have been collected if the through rate had been in effect at the time of movement. *Stock Yards Cotton & Linseed Meal Co. v. M. K. & T. Ry. Co.* 295.

REFRIGERATION.

Malaga grapes, while not requiring refrigeration, do require care in transportation to protect against low temperatures, and the carriers generally provide refrigerator cars for their transportation, but without icing. *Connolly-Fanning Co. v. P. R. R. Co.* 283 (285).

REFRIGERATION CHARGE.

Refrigeration charges on carload asparagus to New York and Boston found to be not unreasonable. *Asparagus Growers Asso. v. A. C. L. R. R. Co.* 423. No provision in tariff for assessment. Shipper paid sum demanded. Commission has jurisdiction to inquire what was a reasonable charge and to order repayment of whatever carrier has collected over and above such reasonable charge. *Memphis Freight Bureau v. K. C. S. Ry. Co.* 90.

Additional charge of \$15 for icing unnecessary for precooled fruit and unreasonable. *California Fruit Growers' Exchange v. Santa Fe Refrigeration Despatch Co.* 404.

REGULATION.

If the contention is correct that defendants are not subject to the act to regulate commerce, the reasonableness of the fares could be determined only by the common law or by Congress. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (246).

Act applies to both passenger and freight business. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (244).

REHEARING.

Rehearing on supplemental petition granted and certain other reductions in rates made. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 447.

Petition for denied. *Hitchman Coal & Coke Co. v. B. & O. R. R. Co.* 473.

Petition by defendant denied. *Woodward & Dickerson v. L. & N. R. R. Co.* 9.

RELATIVE ADJUSTMENT.

The matter of adjusting rates relatively to meet conditions that will arise after the reduction herein ordered is made rests primarily with the defendants. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (229).

RELATIVE RATES.

Where rates on a particular commodity bear a uniform relation to rates of a certain class, any inequalities in those rates as between different places are those peculiar to that class. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30 (35).

Rates in one section furnish no reliable standard by which to measure the reasonableness of rates in another section where dissimilar conditions prevail. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

RELATIVE RATES—Continued.

Circumstances and conditions at Minneapolis and St. Paul not the same as at Chicago to justify order requiring carriers to assist in unloading fruit and vegetables at Minneapolis and Chicago. Wholesale Fruit & Produce Asso. v. A. T. & S. F. Ry. Co. 596.

Rates on walnut logs from Weiner and St. Francis, Ark., and intermediate points to East St. Louis compared with other rates on the same commodity in that general territory and found unreasonable. East St. Louis Walnut Co. v. St. L. S. W. Ry. Co. of Texas. 582.

Percentages of Chicago rates from Atlantic seaboard to Saginaw, Flint, and other points in Saginaw Valley not found too high when compared with percentages that fix rates to other groups in adjacent territory. Saginaw Board of Trade v. Grand Trunk Ry. Co. 128.

Where rates not shown unreasonable, reduction which would be followed by like reductions at competitive points maintaining same relationship not justified. Montgomery Freight Bureau v. L. & N. R. R. Co. 521 (529).

Mere fact that rates on sheep over Northern Pacific Railway and Great Northern Railway westbound to Tacoma may have been less than from California points not sufficient to establish California rates were unreasonable. Carstens Packing Co. v. So. Pac. Co. 6 (8).

Saginaw, Mich., removed from the great channels of through transportation, which necessarily tends to higher rates than are accorded communities in close proximity to those points favorably situated. Saginaw Board of Trade v. G. T. Ry. Co. 128.

Rate of 50 cents per 100 pounds on hemp in carloads from Pacific coast terminals to Bismarck, N. Dak., not found to be discriminatory as compared with rate of 55 cents from same points to Chicago. Helstrom v. N. P. Ry. Co. 590.

Rates on black powder from Montchanin, Del., to Pennsylvania and Ohio points should not exceed rates from other points in "Philadelphia Rate Basis" territory. Du Pont de Nemours Powder Co. v. P. R. R. Co. 544.

Rates through Memphis on lumber from competitive producing points in Mississippi to competitive consuming points in the Northeast found unduly discriminatory against Cairo, Ill. Sondheimer Co. v. Ill. Cent. R. R. Co. 60.

Extensive application of fourth-class rates on oils and voluntary publication of those rates by other carriers than defendants must be fairly remunerative. Bartles Oil Co. v. C. M. & St. P. Ry. Co. 146 (148).

Where same relation would follow reduction of rate, the relation should be kept in mind by carriers and this Commission. Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co. 552 (561).

Lower rate from other points in vicinity of Caney, Kans., on liquid asphaltum to Minneapolis, Minn., voluntarily made basis of rate from Caney. Central Commercial Co. v. A. T. & S. F. Ry. Co. 168.

Low rate over long and circuitous route to obtain long haul not standard of comparison with rates over two or more separately owned lines. Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co. 479 (485).

Rate via route which shipment took voluntarily reduced to basis of that via other routes to same point. Monarch Milling Co. v. C. R. I. & P. Ry. Co. 1; Havemeyer & Co. v. U. P. R. R. Co. 13.

Chicago-Des Moines rate compared with Chicago-St. Paul rate. Held, No unreasonable preference or advantage has been established. Greater Des Moines Committee v. C. R. I. & P. Ry. Co. 57.

RELATIVE RATES—Continued.

Carrier must accord to points on its own line which are entitled to similar treatment equal facilities of shipment and relatively equal rates. *Sondheimer Co. v. Ill. Cent. R. R. Co.* 60 (64).

Rates on cotton from Jackson, Tenn., to New England points compared with rates from Brownsville, Tenn., to same destination. *Railroad Commission of Tennessee v. A. A. R. R. Co.* 418.

Georges Creek basin to tide water on coal compared with rates on same commodity from Pennsylvania and West Virginia fields to same points. *American Coal Co. v. B. & O. R. R. Co.* 149.

Rates on pineapples from Florida points up to the base points and beyond compared with rates from Habana, Cuba. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (559).

It does not follow that if a joint through rate is effective via one route it must necessarily be made effective via another. *Males Co. v. L. & H. R. Ry. Co.* 280 (282).

Astoria, Oreg., rates reduced down to basis of proper relationship to rates to other Pacific coast points. *Farmers' Cooperative & Educational Union v. G. N. Ry. Co.* 406.

Comparison of rates with those in other sections fails when defendant operates at extremely high cost. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 540.

Class rates from Chicago to Ottumwa, Iowa, compared with rates from Chicago to Burlington, Iowa. *Ottumwa Commercial Asso. v. C. B. & Q. R. R. Co.* 413.

Salt rates from Kansas fields to Muskogee compared with rates to Fort Smith, Ark. *Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co.* 169.

Rate not unreasonable simply because a lower rate is in effect via lines of other carriers. *South Canon Coal Co. v. C. & S. Ry. Co.* 286.

Rates from Memphis to destinations in question compared with rates from other points. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (320).

Rates complained of found not unreasonable as compared with other rates. *Manahan v. N. P. Ry. Co.* 95 (97).

RELEASE OF EQUIPMENT.

Cars are primarily for transportation and not for storage or warehouse purposes, and the public as well as carriers are vitally interested in the prompt release of cars. *Turnbull Co. v. Erie R. R. Co.* 123 (125).

REPARATION.

Rate from El Paso, Tex., to Las Cruces, N. Mex., lower than local, applicable only to traffic that has come into El Paso, at any time in the past, over defendants' line, is unlawful and discriminatory, and therefore we must decline to give complainant the benefit of it on shipment in question. *Bascom v. A. T. & S. F. Ry. Co.* 354 (358).

No order made; but complainant and accounting officers of defendants should check shipments falling within the findings herein made and file an agreed statement as to the number, weight, and movement thereof, whereupon an order for reparation will be duly issued. *East St. Louis Walnut Co. v. St. L. S. W. Ry. Co. of Texas*, 582.

In claim for reparation for alleged unlawful exaction of demurrage charges, based upon the construction of a tariff provision and dependent upon a question of fact in each instance, in the absence of specific proof as to each car, the Commission could not make an award. *Murphy Bros. v. N. Y. C. & H. R. R. R. Co.* 457 (459).

INDEX—Continued.

Unfair treatment resulting from comparison and settlement being authorized. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination with Law*, in *Section 11* and *Section 12* of *Unreasonable Discrimination* in as far as it relates to matters within the Commission's jurisdiction. *See* *Section 10* and *Section 11*.

The Commission is not empowered to compensate, but it appears that charges made are not too high. Even if this were found to be unreasonable, it would be possible to give a refund because complainant has not paid the full value of service. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Rate reduction of 10% will be unreasonable as to entitle complainant to reparation. The reduction of a rate by a carrier will not, without proof that the rate was unreasonable, furnish a basis for reparation. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

The rate is reduced to 10% because of shipments made by parties to any other reduction or because of all shipments moving under the same circumstances and conditions and charges for on the basis found to be unreasonable. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Rate was in effect advanced as compared to increase in minimum, by which no earnings were reduced below former earnings, no basis for reparation when rate subsequently reduced, but having higher minimum in effect. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Shipping charges in one industry ordered reduced, but for same reason no reduction in other industries made. Period for reduction ordered, but reduction allowed only from date of reduction in other case. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Upon application of complainant, an examiner will be delegated to take testimony upon the various reparation claims involved in these cases, and upon that record the parties will be further heard and proper orders made. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Avoided on account of rate overcharge and to cover transfer and demurrage charges accruing because of refusal of delivering line to receive car from its collection. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Rate voluntarily reduced after hearing, but reparation denied, the classification and rates having been affirmed on the record as being unreasonable under the commercial conditions which formerly prevailed. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Commission declines to award reparation upon shipments moving under a published rate with a private understanding that a lower rate would be established and reparation made with approval of this Commission. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

If rate was in fact unreasonable, defendants must make reparation irrespective of fact that shipper could have enjoyed lower rate if shipments had moved through a different gateway. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Rate found unreasonable as of the present; no finding as to the past; subsequently petition filed for reparation on basis of shipments made two years prior to reduction. Denied. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

Commission inquires with care into merits of complaints presented by shippers and carriers jointly lest unlawful preferences be unwittingly sanctioned. *See* *Section 10* and *Section 11* of *Unreasonable Discrimination*.

REPARATION—Continued.

An order for reparation for unreasonable rate can be predicated only upon an affirmative finding that the rate exacted was in fact excessive. *Pabst Brewing Co. v. C. M. & St. P. Ry. Co.* 359.

No basis for merely because carrier would consent. *Werner Saw Mill Co. v. I. C. R. R. Co.* 388 (390); *Pabst Brewing Co. v. C. M. & St. P. Ry. Co.* 359; *Pacific Elevator Co. v. C. M. & St. P. Ry. Co.* 373.

Line participating in collection of overcharge should participate in refund on basis of agreed divisions, though no order can be entered against it because not a party of record. *Jones v. K. C. S. Ry. Co.* 468 (470).

The owner of freight who has been required to pay an unreasonable rate is entitled to reparation irrespective of the profits accruing from his business. *Kindelon v. S. P. Co.* 251 (255).

Commission will not award reparation on basis of rate that is lower than that which it would prescribe as reasonable. *Pacific Elevator Co. v. C. M. & St. P. Ry. Co.* 373.

A carrier that has collected an overcharge can not be excused from repayment of same because it has paid it to another carrier. *Rehberg & Co. v. Erie R. R. Co.* 508 (510).

Reparation claimed on shipment moving under rates about which no testimony offered or proper parties present. Claim denied. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (227).

Assessment of damages by Commission, other than damages that may be measured by differences in rates, must be left to be determined by courts. *Joynes v. P. R. R. Co.* 361.

Commission can not award reparation for damages for decay of fruit resulting from discrimination in furnishing unloading facilities. *Joynes v. P. R. R. Co.* 361.

Complainant entitled to reparation for the amount of difference between former rates paid and rates found to be reasonable herein. *Hood & Sons v. Del. & Hud. Co.* 15 (21).

Complainant having died since this action was begun, the sum awarded should be paid to the legal representative of his estate. *Springer v. E. P. & S. W. R. R. Co.* 322 (323).

Commission may award reparation over reasonable rate, where charges were not embodied in any tariff. *Memphis Freight Bureau v. K. C. S. Ry. Co.* 90.

Complainant a commission merchant who did not pay charges; reparation should be paid to whom it appears is entitled to it. *Jones v. K. C. S. Ry. Co.* 468 (470).

Claims for damages not directly due to violation of the act are cognizable in courts, not before Commission. *Carstens Packing Co. v. O. R. R. & N. Co.* 125 (126).

Rates not found to have been so unreasonable in the past as to justify awarding reparation. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 447 (450).

Commission orders reparation, leaving to parties matter of determining what is due. *Olympia Brewing Co. v. N. P. Ry. Co.* 178 (181).

Reparation in any given case is due the person who has been required to pay an unlawful charge. *Kindelon v. S. P. Co.* 251 (254).

Reparation will be awarded upon presentation of evidence of payment of freight charges. *Crutchfield & Woolfolk Co. v. L. & N. R. R. Co.* 302.

Division of reparation between carriers left to them. *Davenport Pearl Button Co. v. C. B. & Q. R. R. Co.* 193.

REPARATION—CLASSIFIED LIST.

Discrimination:

- Henderson Elevator Co. *v.* I. C. R. R. Co. 573.
 Olympia Brewing Co. *v.* N. P. Ry. Co. 178.
 Sondheimer Co. *v.* Ill. Cent. R. R. Co. 60.

Misrouting:

- Carstens Packing Co. *v.* O. R. R. & N. Co. 125.
 Foster Lumber Co. *v.* A. T. & S. F. Ry. Co. 292.
 Larrow Milling Co. *v.* C. & N. W. Ry. Co. 443.
 Saner-Whiteman Lumber Co. *v.* T. & N. O. R. R. Co. 290.

Overcharge:

- Contact Process Co. *v.* N. Y. C. & St. L. R. R. Co. 184.
 Ellsworth Produce Co. *v.* U. P. R. R. Co. 182.
 Germain Co. *v.* N. O. & N. E. R. R. Co. 22.
 James & Abbot Co. *v.* B. & M. R. R. 273.
 Jones *v.* K. C. S. Ry. Co. 468.
 Kaye & Carter Lumber Co. *v.* M. & I. Ry. Co. 209.
 Larrowe Milling Co. *v.* C. & N. W. Ry. Co. 443.
 Larrowe Milling Co. *v.* C. & N. W. Ry. Co. 548.
 Munroe & Sons *v.* Mich. Cent. R. R. Co. 27.
 Otis Elevator Co. *v.* N. Y. C. & H. R. R. R. Co. 3.
 Rehberg & Co. *v.* Erie R. R. Co. 508.

Unreasonable rate:

- Acme Cement Plaster Co. *v.* L. S. & M. S. Ry. Co. 30.
 Aetna Powder Co. *v.* C. M. & St. P. Ry. Co. 165.
 American Trust & Savings Bank *v.* C. M. & St. P. Ry. Co. 11.
 Awbrey & Semple *v.* G. H. & S. A. Ry. Co. 267.
 Baer Bros. Mercantile Co. *v.* M. P. Ry. Co. 225.
 Beekman Lumber Co. *v.* K. C. S. Ry. Co. 86.
 Black Horse Tobacco Co. *v.* I. C. R. R. Co. 588.
 Blodgett Milling Co. *v.* C. M. & St. P. Ry. Co. 587.
 Bunch & Tussey *v.* Nevada-California-Oregon Ry. 490, 506.
 California Fruit Growers' Exchange *v.* Santa Fe Refrigerator Despatch Co. 404.
 Carstens Packing Co. *v.* O. S. L. R. R. Co. 324.
 Central Commercial Co. *v.* A. T. & S. F. Ry. Co. 166.
 Corporation Commission of Oklahoma *v.* C. R. I. & G. Ry. Co. 379.
 Crowell & Spencer Lumber Co. *v.* T. & P. Ry. Co. 333.
 Crutchfield & Woolfolk *v.* L. & N. R. R. Co. 302.
 Davenport Pearl Button Co. *v.* C. B. & Q. R. R. Co. 193.
 East St. Louis Walnut Co. *v.* St. L. S. W. Ry. Co. of Texas, 582.
 Havemeyer & Co. *v.* U. P. R. R. Co. 13.
 Hinton Fruit & Produce Co. *v.* C. & O. Ry. Co. 578.
 Hood & Sons *v.* Del. & Hud. Co. 15.
 Jenks Lumber Co. *v.* So. Ry. Co. 581.
 Kaye & Carter Lumber Co. *v.* M. & I. Ry. Co. 209.
 Kimberly *v.* C. & O. Ry. Co. 335.
 Kindelon *v.* S. P. Ry. Co. 251.
 Lauer & Son *v.* Nevada-California-Oregon Ry. 488.
 Memphis Freight Bureau *v.* K. C. S. Ry. Co. 90.
 Merle Company *v.* A. T. & S. F. Ry. Co. 471.
 Merle Company *v.* N. Y. C. & H. R. R. R. Co. 475.
 Merle Company *v.* N. Y. N. H. & H. R. R. Co. 585.

REPARATION—CLASSIFIED LIST—Continued.**Unreasonable rate—Continued.**

- Monarch Milling Co. v. C. R. I. & P. Ry. Co. 1.
 Montague & Co. v. A. T. & S. F. Ry. Co. 72.
 Olympia Brewing Co. v. N. P. Ry. Co. 178.
 Peerless Agencies Co. v. A. T. & S. F. Ry. Co. 218.
 Tritch Hardware Co. v. Rutland R. R. Co. 542.
 Van Brunt Manufacturing Co. v. C. M. & St. P. Ry. Co. 195.
 Vanness v. L. & H. Ry. Co. 307.
 West Texas Fuel Co. v. T. & P. Ry. Co. 491.
 White Brothers v. A. T. & S. F. Ry. Co. 416.
 Williar v. Can. Nor. Que. Ry. Co. 304.

Unreasonable rule:

- Jobbins v. C. & N. W. Ry. Co. 297.
 Kaye & Carter Lumber Co. v. M. & I. Ry. Co. 209.
 Peerless Agencies Co. v. A. T. & S. F. Ry. Co. 218.
 Pope Mfg. Co. v. B. & O. R. R. Co. 400.
 Springer v. E. P. & S. W. R. R. Co. 322.

REPEAL.

Charter contained reservation of right in Congress to regulate certain charges. Section 26 of the act repealed this act in that, instead of specifically fixing those charges, it delegated the authority to this Commission. West End Improvement Club v. O. & C. B. R. & B. Co. 239 (246).

Law does not favor a repeal by implication. It is only where there is irreconcilable conflict or repugnancy that the special or particular statute falls under the repealing clause of the general statute. West End Improvement Club v. O. & C. B. R. & B. Co. 239 (246).

Act clearly intended to prescribe the only rule as to regulation of interstate rates, and it should and does supersede different rules in prior statutes. West End Improvement Club v. O. & C. B. R. & B. Co. 239 (247).

RESHIPMENT.

Tariffs provided that on reshipment from concentration point the through rate from origin to final destination would be protected. Consignment was destroyed by fire while at transit point. Claim for refund of local rate from origin to transit point denied. Anderson, Clayton & Co. v. St. L. & S. F. R. R. Co. 12.

Combination rate on lumber through Memphis with maximum "shrinkage," total rate never to be less than through rate from origin to destination, and not doing so when through Cairo, Ill., no discrimination—circumstances different. Sondheimer Co. v. I. C. R. R. Co. 60.

RETURN EMPTIES.

It is difficult to see how earnings of from \$24 to \$48 per car for a haul of some 500 miles can be held an excessive return for the service rendered, nor is this conclusion affected by consideration of the fact that shipments in question consisted of returned empties and that carrier's chief recompense comes from outbound movement. Pabst Brewing Co. v. C. M. & St. P. Ry. Co. 359 (360).

REVENUE.

Fact that rate on particular commodity could be reduced without impairing seriously revenues of carrier, standing alone, has little value and forms no basis upon which to determine reasonableness of rates. Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co. 189 (192).

REVENUE—Continued.

Owing to differences in bulk and weight there must of necessity be marked variations in revenue per car produced by articles in the same and other classes, and a disparity either way is not conclusive of propriety of an adjustment. *Kiger Co. v. C. of G. Ry. Co.* 430 (439).

Reduction not ordered but suggested, which would probably stimulate the movement of traffic to such an extent as would make good to the carriers any loss in revenue from a reduction of the rate. *Weber Club & Inter-mountain Fair Asso. v. O. S. L. R. R. Co.* 212 (217).

Because revenues of carrier high during period of general prosperity, rates should not be reduced; periods when it operated almost at loss should be considered. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (564).

RIGHT OF WAY.

Lease of part of and erecting thereon an expensive elevator at a nominal rental operates as an unlawful preference. *Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co.* 158.

RISK.

In making a classification of articles, liability to loss and damage and similar elements affecting the disrability of the traffic should be considered. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (203).

If there is any risk in carrying shipment without payment of charges carrier must in fulfillment of its own duty under the law resolve that risk against consignor and collect in advance. *Boise Commercial Club v. Adams Express Co.* 115 (121).*

Oil in less-than-carloads is not, generally speaking, a desirable traffic. *Bartles Oil Co. v. C. M. & St. P. Ry. Co.* 146 (148).

ROUTE.

All carriers participating in movement were parties to tariff naming joint through rate from A to C. North of B, an intermediate point, tariff specified no routing, and this left the rate in effect over all reasonably direct routes between the points in question over the lines of carriers parties to the tariff. *Germain Co. v. N. O. & N. E. R. R. Co.* 22 (24).

Complainant elected to use more expensive of two routes, and then complains of unreasonable rate. Cost of operation of one factor in the route taken extremely high, justifying rates ordinarily excessive. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 540.

A through rate regularly published between two points and available under the tariff over several different routes is not nullified as to one such route by failure of participating carriers to agree upon divisions over that route. *Germain Co. v. N. O. & N. E. R. R. Co.* 22.

Shipment sent over expensive route; rate subsequently voluntarily reduced to basis of those via other routes; reparation awarded. *Monarch Milling Co. v. C. R. I. & P. Ry. Co.* 1; *Havemeyer & Co. v. U. P. R. R. Co.* 13.

Carriers charged with exacting an unreasonable rate can not escape liability solely upon the ground that shipments could have been transported via a route carrying a higher rate. *Willmar v. Can. Nor. Que. Ry. Co.* 304 (305).

It does not follow that if a joint through rate is effective via one route it must necessarily be made effective via another. *Males Co. v. L. & H. R. Ry. Co.* 280 (282).

Claim of misrouting denied, but reparation awarded for an overcharge, the lower of two rates legally in effect being that via which the shipment moved. *Jones v. K. C. S. Ry. Co.* 468.

Rate not unreasonable simply because a lower rate is in effect via lines of other carriers. *South Canon Coal Co. v. C. & S. Ry. Co.* 286.

ROUTING INSTRUCTIONS. See **INSTRUCTIONS.**

SAMPLES.

Carried by drummers charged on excess over free-baggage limit. *Herbeck Demer Co. v. B. & O. R. R. Co.* 88 (89).

SCHOOL CHILDREN.

Section 2 precludes the allowance of commutation rates to school children unless the same rates are open to all children within the age limit. *In re Commutation Tickets to School Children*, 144.

SECTION ONE.

To and from terminals within lighterage limits of New York defendants are common carriers "wholly by railroad" within meaning of section 1. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (46).

The term "railroad" as defined in the act of 1887 is enlarged by the provisions of the act of 1906. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (244).

SECTION TWO.

Precludes the allowance of commutation rates to school children unless the same rates are open to all children within the age limit. *In re Commutation Tickets to School Children*, 144.

SECTION THREE. See **DISCRIMINATION.**

SECTION FOUR. See **LONG AND SHORT HAUL.**

SECTION FIFTEEN. See also **ALLOWANCE.**

It is the dominating and controlling expression of the real object and meaning of the act. It makes of the Commission a special expert body to deal with rates, and not to supplant the courts. *Joynes v. P. R. R. Co.* 361.

SECTION SIXTEEN. See also **LIMITATION.**

Quoted and considered. *Woodward & Dickerson v. L. & N. R. R. Co.* 9.

SECTION TWENTY-TWO.

Provisions of do not entirely exempt the issuance of commutation, mileage, or excursion tickets from the operation of the undue-discrimination provision of the act. *Weber Club & Intermountain Fair Asso. v. O. S. L. R. R. Co.* 212.

Gives carriers right to transport traffic for the use of United States, state, or municipal governments at reduced rates if they see fit to do so. *Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co.* 197 (204).

SECTION TWENTY-SIX. See **REPEAL.**

SHIPPER.

No violation of the statute results from a preference, though found to exist, to a corporation engaged solely in the compression of cotton in which it has no interest. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (104).

SHIPPER'S INSTRUCTIONS. See **INSTRUCTIONS.**

"SHRINKAGE" OF RATE.

On lumber through Memphis, combination rates applied with maximum "shrinkage," total rate charged not to be less than through rate from original point of shipment to destination. *Sondheimer Co. v. Ill. Cent. R. R. Co.* 60.

SLIDING SCALE.

Minimum carload weights for transportation of furniture from various eastern points to certain Pacific coast cities involved in these proceedings, established by the sliding scale for cars of the length used, were reasonable. *Pease Bros. Furniture Co. v. S. P. L. A. & S. L. R. R. Co.* 223.

SPECIAL EXAMINER.

Upon application of complainant, an examiner will be delegated to take testimony upon the various reparation claims involved in these cases, and upon that record the parties will be further heard and proper orders made. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 447.

SPECIAL SERVICE.

The expedited service in transporting cotton-seed oil not only necessitates a smaller tonnage per train than ordinary freight, but is attended by some extra expense to the defendants in the way of telegraphing and additional employees. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (319).

Malaga grapes, while not requiring refrigeration, do require care in transportation to protect against low temperatures, and the carriers generally provide refrigerator cars for their transportation, but without icing. *Connolly-Fanning Co. v. P. R. R. Co.* 283 (285).

Ice transported in special ice cars should be charged higher rate than when transported in ordinary box cars. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 447.

SPUR.

A spur used or necessary exclusively in the transportation of persons is as much subject to the act as are "freight depots, yards, and grounds" used or necessary "in the transportation or delivery of any of said property." *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (244).

STATE COMMISSION.

This Commission is not controlled by the rates established by state commissions unless they seem reasonable when applied to interstate movements. *Bartles Oil Co. v. C. M. & St. P. Ry. Co.* 146 (148).

Comparison made with rates fixed on coal by them and with interstate rate complained of. *Manahan v. N. P. Ry. Co.* 95 (96).

STATE RATES.

Rates prescribed for the transportation of pineapples and citrus fruits from Florida points of production to Florida base points, destined beyond. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552.

STATIONS. See TERMINAL.**STATION FACILITIES.**

Without determining jurisdiction of Commission to require erection of station facilities, facts found not to warrant an affirmative order. *Snook v. C. R. R. Co. of N. J.* 375.

STATUTE OF LIMITATION. See LIMITATION.**STIPULATION.**

It is somewhat difficult to understand why a carrier should decline to make application for informal adjustment, and thus compel complainant to file formal complaint, and then, by answer and stipulation, admit the allegations and agree to submission of the case on the pleadings. *Davenport Pearl Button Co. v. C. B. & Q. R. R. Co.* 193.

A stipulation as to almost any fact is ordinarily accepted as conclusive; but as Commission is charged with enforcement of lawful rates, it is not able at all times to accept views of parties as to what in fact is the lawful rate between given points on a specified commodity. *Germain Co. v. N. O. & N. E. R. R. Co.* 22 (24).

Under a stipulation entered into, the testimony taken in another case was read in evidence and the case was submitted without any additional testimony whatever. *Bartles Oil Co. v. C. M. & St. P. Ry. Co.* 146 (147).

STOCK OWNERSHIP.

The mere interposition between lumber mill and carrier of a paper railroad incorporation that calls itself a common carrier, but is owned by the mill or its proprietors, does not give legality to the so-called tap-line allowances. *Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co.* 338.

Mere owning majority of stock by shipper in a corporation performing a service for a railroad at compensation involving no more than reasonable profit, no violation of the act; but paper organization can not evade the provisions of the law. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98.

STORAGE CHARGES.

Unlimited free time at New Orleans on through export shipments of forest products no discrimination against local shipments "for export" on which free time is limited. *New Orleans Board of Trade v. I. C. R. R. Co.* 496.

STREET RAILROADS.

When engaged in interstate commerce, subject to the act. Certain reductions in rates from Council Bluffs to Omaha ordered. *West End Improvement Club v. O. & C. B. Ry. & B. Co.* 239.

SWITCH.

A switch used or necessary exclusively in the transportation of persons is as much subject to the act as are "freight depots, yards, and grounds" used or necessary "in the transportation or delivery of any of said property." *West End Improvement Club v. O. & C. B. R. & R. Co.* 239 (244).

SWITCHING ALLOWANCE.

Allowance made at South Memphis for handling cotton from interchange tracks to compresses and warehouses, in order to place South Memphis dealers on a parity with Memphis dealers, where there is a free store-door delivery, not objectionable. *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.* 98 (103).

SWITCHING CHARGE.

The service performed by the Crane R. R. Co. for the complainant is that of a plant facility, the expense of which should be borne entirely by the complainant, and which no railroad under the guise of the absorption of a switching charge may lawfully sustain. *Crane Iron Works v. C. R. R. Co.* of N. J. 514.

Switching charge in El Paso to and from industries located on the T. & P. Ry. to and from the A. T. & S. F. Ry. and E. P. & S. W. Ry. rails, on commodities destined to points outside Texas or delivered in El Paso from points outside Texas, found unreasonable and reduced. *West Texas Fuel Co. v. T. & P. Ry. Co.* 491 (494).

Cancellation of joint rate and absorption of switching charges, in order to remove discrimination, not disturbed. *Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co.* 189.

TAP-LINE ALLOWANCES.

Condemned. *Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co.* 338.

TARIFF.

Where service has been rendered for which no tariff authority exists Commission has jurisdiction to inquire into reasonableness of charge and to award reparation if necessary. *Memphis Freight Bureau v. K. C. S. Ry. Co.* 90.

A complainant is not deprived of his right to a reasonable rate by the fact that the defendants, through neglect of the rules of this Commission as to publication of their tariffs, had failed to establish that rate in legal form. *Black Horse Tobacco Co. v. I. C. R. R. Co.* 588.

TARIFF—Continued.

Demurrage assessed without tariff authority on car destined at intermediate point through no fault of shipper, wrongfully imposed. *Germain Co. v. N. O. & N. E. R. R. Co.* 22; *Monroe & Sons v. Mich. Cent. R. R. Co.* 27.

Where language of tariff, based on agreement of parties covering points in controversy, is ambiguous, agreement may be examined as a medium of explanation of tariff to remove ambiguity. *Hood & Sons v. Del. & Hud. Co.* 15.

Intermediate line party to proceeding, answered admitting shipment. Through rate found unreasonable. While that line not shown as party to tariff, Commission may pass on reasonableness of rates and award reparation. *Kindelon v. S. P. Co.* 251 (266).

Held unreasonable in not providing for protection of minimum of car of size ordered where larger car furnished. *Kaye & Carter Lumber Co. v. M. & I. Ry. Co.* 209.

Ambiguous and indefinite tariffs, susceptible of and resulting in conflicting interpretations, criticized. *Old Dominion Copper & Smelting Co. v. P. R. R. Co.* 309.

Erroneous insertion of "net ton" changed to "gross ton of 2,240 pounds." *American Trust & Savings Bank v. C. M. & St. P. Ry. Co.* 11.

Provision in tariff which is irrelevant and mere surplusage held unreasonable because misleading. *Larrowe Milling Co. v. C. & N. W. Ry. Co.* 548.

Held unlawful in not containing a two-cars-for-one rule. *Jobbins v. C. & N. W. Ry. Co.* 297.

TARIFF ACT.

Carriers should not nullify the tariff laws. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552 (561).

TERMINALS.

Terminals within lighterage limits of New York Harbor are railroad terminals, none the less so because they are reached by ferries instead of bridges. To and from these places the defendants are common carriers "wholly by railroad" within meaning of section 1. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (46).

Railroads may secure and maintain freight depots by contract with independent concerns, and such depots thereby become legally and to all intents and purposes the freight depots of the railroads. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (47).

TERMINAL FACILITY.

A terminal facility used or necessary exclusively in the transportation of persons is as much subject to the act as are "freight depots, yards, and grounds" used or necessary "in the transportation or delivery of any of said property." *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (244).

THROUGH AND LOCAL.

Even though a given combination is brought about by competitive conditions inducing the establishment of the factors constituting the same, in absence of facts to the contrary there would seem to be but little ground for claiming that a through rate should exceed that combination. *Awbrey & Semple v. G. H. & S. A. Ry. Co.* 267 (271).

While Commission has frequently held that through rates between certain points should not exceed the combination of local rates between the same points, this is not a universal rule, especially in the case of common rates from points in each of the contiguous group territories. *White Bros. v. A. T. & S. F. Ry. Co.* 298 (299).

THROUGH AND LOCAL—Continued.

Combination lower than through rate. Defendant asserts that one factor is forced by water competition. The through rate should seldom, if ever, for competitive reasons exceed the combination. *Kimberly v. C. & O. Ry. Co.* 335 (336).

Express rates from New York to Boise, Idaho, violate the general principle that through rate shall not exceed lowest combination of locals between same points. *Boise Commercial Club v. Adams Express Co.* 115.

Local rates advanced to equal through rates; lower rates had been in existence for many years and advance condemned. *New Orleans Board of Trade v. I. & N. R. R. Co.* 231.

Through rate on buckwheat from Gobles, Mich., to Janesville, Wis., exceeded combination on Chicago. *Blodgett Milling Co. v. C. M. & St. P. Ry. Co.* 587.

No sufficient evidence that through rate which exceeded combination of locals was unreasonable. *White Bros. v. A. T. & S. F. Ry. Co.* 288.

THROUGH RATE. See also **COMBINATION RATE**; **JOINT THROUGH RATE**.

A rate formed by a combination of separate rates over connecting lines has every substantial feature of a through rate, and separately established rates over a through route is expressly recognized in section 6 of the act. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (228).

Because intermediate line participating in the transportation did not appear to be named in tariff making through rate, Commission not ousted of jurisdiction to pass on rate, and to award reparation. *Kindelon v. S. P. Co.* 251 (266).

Found unreasonable on account of unreasonable factor. *Ottumwa Commercial Asso. v. C. B. & Q. R. R. Co.* 413; *Greater Des Moines Committee v. C. R. I. & P. Ry. Co.* 54.

THROUGH RATE AS UNIT. See **UNIT**.**THROUGH ROUTES.**

While at common law a common carrier may not have been compelled to accord traffic coming off the rails of other carriers and not originating on its own lines the necessary facilities for through movement, under the act to regulate commerce this is no longer the law with regard to interstate carriers. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (480).

Coal from Walsenburg district in Colorado to Texas must be shipped to Amarillo, dealers maintaining an agent there to receive it, pay the freight to that point, and rebill on Texas commission rates. *Held*, not a "reasonable or satisfactory" through route. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479 (480).

A. T. & S. F. Ry. system refused to establish through routes from Walsenburg coal district in Colorado to certain Texas and New Mexico points, because it has on its own lines mines supplying this territory. *Held*, this is no excuse for failure to establish through routes. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479.

The law does not require the Commission in all cases where no through route and joint rate exists to establish a route and fix a rate applicable thereto, but only empowers it to do so in a proper case for the purpose of giving effect to the act. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.* 225 (228).

Through routes from coal mines in Walsenburg district, Colo., to points on A. T. & S. F. Ry. system and controlled lines, to the east and south of Colorado, established. *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* 479.

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... to ... charged a slightly higher per mile rate for ... charged for longer distances. Metro ... 3 3 195 195.

The price charged does not exceed \$10 per unit greater than
the highest price paid by the Chesapeake & Atlantic Coast B. & O. R.R.
for similar service.

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DATE 08-14-2013 BY 60322 UCBAW

Rate of 14 cents per ton per mile for a distance of 354 miles ordered reduced.
 Reduced to 7 1/2¢ = Nevada - Arizona - Oregon Ry. 30¢.

Тема К. 0.2

6. If a N. P. R. has valuable claims over the N. P. from St. Paul to the head of the Lakes, he will want to make rates from the Lakes on coal, oil and gas. N. P. R. to E. R.

TRACK-40-3-313

cars are primarily for transportation and not for storage or warehouse purposes and the public as well as carriers are usually interested in the prompt release of cars. Turnout Co. v. Erie R. Co. 123 (1930).

On 10 & 11 Nov 1964 not found unreasonable. **Turnbull Co. v. Erie R. R.**
60-12

TRAIN LOAD RATES

1972-73 of contract. Carstens Printing Co. O. S. L. R. R. Co. 324 (328).

TRACY STONE

Carrier can not justify increase in discrimination between localities in refusing to stop the passenger trains at a particular place on certain days by a contract not to do so. A controversy involving a question of such discrimination must be determined independent of the contract. *Loch v. Loch Construction Co. v. R. & O. R. R. Co.* 238.

TRANSCONTINENTAL RATES.

Tedco's rate increased the rate on oil from the Atlantic to the Pacific coast, but shortly afterwards reduced it. *Held*, The lower rate is competitive and no basis for finding the higher rate to have been unreasonable. *Fuller v. P. T. & Y. Ry. Co.* 594.

MASTER CHARGE.

1. Legality not decided. *Germain Co. v. N. O. & N. E.*

TRANSIT PRIVILEGES.

Tariffs provided that on reshipment from concentration point the through rate from origin to final destination would be protected. Consignment was destroyed by fire while at transit point. Claim for refund of local rate from origin to transit point denied. *Anderson, Clayton & Co. v. St. L. & S. F. R. R. Co.* 12.

Whenever by any transit arrangement through rates are applied, such through rates must be as of date of first movement from point of origin under such through rates. *In re Milling-in-Transit Rates*, 113.

TWO CARS FOR ONE.

Carrier having for its own convenience furnished shipper with two smaller cars instead of one of capacity ordered. *Held*, That it was unreasonable to charge on basis of combined minima of two cars furnished. *Springer v. E. P. & S. W. R. R. Co.* 322.

Carrier, when unable to furnish double-deck car, as ordered, should furnish two single-deck cars, charging on minimum as of the double-deck car. *Corn Belt Meat Producers' Assn. v. C. B. & Q. R. R. Co.* 533.

Tariffs held unreasonable in not containing rule. *Jobbins v. C. & N. W. Ry. Co.* 297.

UNDERCHARGE.

Carrier may waive its right to demand prepayment and accept shipment with understanding that it will collect from consignee; but if it does not collect from consignee it must look to consignor for payment. *Boise Commercial Club v. Adams Express Co.* 115 (121).

Delivering carrier authorized to omit collection of alleged undercharges, it also appearing that charges assessed were unjust and unreasonable. *Old Dominion Copper & Smelting Co. v. P. R. R. Co.* 309.

UNIT.

Whenever by any transit arrangement through rates are applied, such through rates must be as of date of first movement from point of origin under such through rates. *In re Milling-in-Transit Rates*, 113.

UNLOADING.

The service rendered by the defendant in providing a place where consignments can be handled and in assorting into lots the packages marked with the names of the several dealers to whom they are consigned is a thing of value to the shipper for which the shipper may properly be required to pay. *Davies v. I. C. R. R. Co.* 186 (188).

Petition for order requiring carriers at Minneapolis and St. Paul to assist in unloading fruit and vegetables, and at Chicago to assist in unloading produce and other package freight, denied. *Wholesale Fruit & Produce Assn. v. A. T. & S. F. Ry. Co.* 506.

UNREASONABLE RATE.

Class rates between Chicago and Des Moines not found unreasonable as a whole, but first class reduced. *Greater Des Moines Committee v. C. R. I. & P. Ry. Co.* 57.

USE.

Compared to soft coals mined and transported in the west, blacksmith coal is altogether a different commodity with different characteristics and different value than ordinary bituminous coal. Therefore it may move under a special smithing-coal rate. *Silgo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (143).

Classification resting upon use to which commodity put. Commission will refuse to sanction. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (204).

USE—Continued.

To which commodity is put no basis for difference in rates. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (142).

VALUE.

Commission has never held that face brick, valued at from \$18 to \$24 and generally packed in straw, should be carried at the same rate as ordinary, common brick the rates on which must of necessity be made extremely low, in order to permit their movement at all. *James & Abbot Co. v. B. & M. R. R.* 273 (274).

Average price of high-grade fire brick at the factory, reduced to tons, is about \$5; building brick about \$4; and paving block about \$3. There is therefore no sufficient difference in value to require a grading of rates. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (206).

If the 12-cent rate on cotton seed is a reasonable rate, and it has not been attacked, it would seem to follow that 14-cent rate on cotton-seed oil, in view of great difference in its value, is not an unreasonable rate. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (320).

Two coals entering competitive territory begin to take different rates, the more valuable being better able to stand the competition. *American Coal Co. v. B. & O. R. R. Co.* 149 (150).

In making a classification, value and similar elements affecting the desirability of the traffic should be considered. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (203).

Smithing coal of greater value than ordinary bituminous coal. *Sligo Iron Store Co. v. A. T. & S. F. Ry. Co.* 139 (142).

Comparisons of value of Malaga grapes with vegetables. *Connolly-Fanning Co. v. P. R. R. Co.* 283 (285).

VALUE OF SERVICE.

Boots and shoes are high-grade traffic and should accordingly bear their proportionate share of general transportation expense. *Kiser Co. v. C. of G. Ry. Co.* 430 (441).

Has a more or less definite relation to the rate. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

VOLUME.

Brick is a very desirable traffic. It moves in large volume, can be loaded to full capacity of cars, and is not subject to loss and damage. These elements seem to call for the making of low rates. *Metropolitan Paving Brick Co. v. A. A. R. R. Co.* 197 (207).

It is generally recognized that class rates on heavy commodities are made to move the more or less limited shipments from place to place, and commodity rates to move large, steady shipments. *James & Abbot Co. v. B. & M. R. R.* 273 (275).

While the amount shipped by a concern has little or no bearing on the question of the reasonableness of the rates, it is of some significance where the shipments reach substantial proportions. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

Would be stimulated by suggested reductions, compensating for loss of revenue. *Weber Club & Intermountain Fair Asso. v. O. S. L. R. R. Co.* 212 (217).

Has a more or less definite relation to rate that carrier may reasonably demand. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (318).

VOLUNTARY RATES.

Building and paving brick were carried for many years on a 20-cent basis, and the tariff rate on fire brick 25 cents. The establishment of these rates by the carriers was voluntary. The amount received for the traffic as a whole is to be presumed a reasonable compensation. *Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co.* 107 (207).

There being two rates in effect, shipper justified in demanding lower, and carrier may not lawfully collect more. Commission likewise justified in holding lower rate reasonable, or at least not unreasonably low; because it is voluntary rate of carrier. *Boise Commercial Club v. Adams Express Co.* 115 (121).

Extensive application voluntarily by other carriers than defendant of fourth-class rates on oils evidence of unreasonableness of higher rates in the same general territory. *Bartles Oil Co. v. C. M. & St. P. Ry. Co.* 146 (148).

Carriers may sometimes do, as a matter of policy, what this Commission would not require. *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.* 552.

VOLUNTARY REDUCTION.

Carriers reduced rates and then reestablished old rates, but long maintenance of a particular rating can not negative the right of shippers to such lower adjustment as circumstances and conditions may demand and which action of carriers in voluntarily establishing shows to be *prima facie* reasonable. *Kiser Co. v. C. of G. Ry. Co.* 430 (440).

A carrier voluntarily establishing a through rate less than the sum of the locals after shipment has moved does not, *ipso facto*, become liable for the difference between the amount charged and the amount which would have been collected if the through rate had been in effect at the time of movement. *Stock Yards Cotton & Linseed Meal Co. v. M. K. & T. Ry. Co.* 295.

The voluntary reduction of a rate by a carrier will not, without proof that the rate was unreasonable, furnish a basis for reparation. *Foster Lumber Co. v. G. C. & S. F. Ry. Co.* 385.

Commission declines to award reparation upon shipments moving under a published rate with a private understanding that a lower rate would be established and reparation made with approval of this Commission. *Armour Car Lines v. S. P. Co.* 461.

Rate voluntarily reduced after hearing not found unreasonable, but ordered to be maintained two years from the period it became effective. Reparation denied. *Harmon & Co. v. L. S. & M. S. Ry. Co.* 394.

After complaint filed, rate voluntarily reduced. Reparation awarded on shipments made under higher rate. *Central Commercial Co. v. A. T. & S. F. Ry. Co.* 168.

WAGON COMPETITION.

Wagon competition, in addition to railroad competition, forced defendant to maintain rate lower than railroad competitors. *Kimberly v. C. & O. Ry. Co.* 335 (336).

WASHOUT.

Necessitating diversion from route directed. Reparation awarded for difference in rates. Feeding charges not found excessive. *Carstens Packing Co. v. O. R. R. & N. Co.* 125.

WATER COMPETITION.

There is water competition by regular boat lines and by small craft between Boston and Portland, and this water competition, covering over 100 miles of the distance between Boston and Lewiston, which is about 139 miles, necessarily has a tendency to keep the class rates within reasonable bounds. *James & Abbot Co. v. B. & M. R. R.* 273 (275).

WATER COMPETITION—Continued.

Rail carriers from Grand Rapids ought not to be required to make rates to meet water competition or to equalize for complainant advantages of a business rival which moves its products to Chicago by its own water line. *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.* 30.

Low percentages at Detroit and Toledo was the result, if not of actual water competition, at least of a very strong potential competition arising from their location on the Lakes. *Saginaw Board of Trade v. Grand Trunk Ry. Co.* 128 (136).

Combination lower than through rate. Defendant asserts that one factor is forced by water competition. The through rate should seldom, if ever, for competitive reasons, exceed the combination. *Kimberly v. C. & O. Ry. Co.* 335 (336).

Elimination of water competition at Memphis leaves no reason for extremely low rates to that point. *Memphis Cotton Oil Co. v. I. C. R. R. Co.* 313 (320).

Transcontinental rate on oil competitive. *Fuller & Co. v. P. C. & Y. Ry. Co.* 584.

WEIGHT.

Defendant's l. c. l. rate on gunpowder in quantities of less than 10,000 pounds was twice the first-class rate, while on shipments exceeding 10,000 pounds the single first-class rate applied. *Held*, That a charge on complainant's shipments of less than 6,000 pounds that exceeds the charges assessable on an l. c. l. shipment of the same commodity of 10,000 pounds is unreasonable. *Aetna Powder Co. v. C. M. & St. P. Ry. Co.* 165.

It is in the interest of economical transportation that cars containing light and bulky articles should be loaded as heavily as possible, and it is equally plain that carrier can afford, to an extent, to decrease its rates in proportion as the loading increases. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72 (75).

Cost of movement to carrier depends upon weight loaded into car. Weight of car must be hauled whether contents weigh much or little. Expense of transporting car containing 20,000 pounds not much greater than expense of carrying same car if it contains but 10,000 pounds. *Montague & Co. v. A. T. & S. F. Ry. Co.* 72 (74).

Charges assessed in accordance with tariff on "per net ton;" subsequently changed to "gross ton of 2,240 pounds." *American Trust & Savings Bank v. C. M. & St. P. Ry. Co.* 11.

WHOLESALE RATES.

Propriety of trainload rates doubted. *Carstens Packing Co. v. O. S. L. R. R. Co.* 324 (328).

"WHOLLY BY RAILROAD." See WORDS AND PHRASES.

WORDS AND PHRASES.

The phrase "overcharge," as used by the Commission, embraces only cases where carriers have demanded and received a rate in excess of the published rate. *Tyson & Jones Buggy Co. v. Aberdeen & Asheboro Ry. Co.* 330 (332).

With general uniformity throughout the act the use of the words "passengers or property" clearly denotes that carriers of either the one or the other or both are subject to its provisions. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (244).

WORDS AND PHRASES—Continued.

The words "railway" and "railroad" are completely synonymous and no significance can be attached to the choice of either name or to the use of either word in a statute, decision, or discussion. *West End Improvement Club v. O. & C. B. R. & B. Co.* 239 (244).

"Wholly by railroad." To and from terminals within lighterage limits of New York Harbor defendants are common carriers "wholly by railroad" within meaning of section 1. *Federal Sugar Refining Co. v. B. & O. R. R. Co.* 40 (46).

YARDING PRIVILEGE.

On lumber through Memphis, not allowed at Cairo, Ill.; owing to dissimilar circumstances no discrimination against Cairo. *Sondheimer Co. v. I. C. R. R. Co.* 60.



